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Concealing More Than Your Affairs: A Deep Dive into the World of Cryptocurrency and its Future Influence on Family Law in Ohio

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CONCEALING MORE THAN YOUR AFFAIRS: A DEEP DIVE INTO THE WORLD OF CRYPTOCURRENCY AND ITS FUTURE INFLUENCE ON FAMILY LAW IN OHIO

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ABSTRACT

This Note dives into the world of cryptocurrency and family law in Ohio. With its current popularity and dramatic fluctuations, cryptocurrency has created a new legal issue in the family law practice. Specifically, this Note focuses on the concealability of Bitcoin and how that influences division of property, spousal support, and child support in Ohio divorce proceedings and settlements. To tackle this issue, this Note begins with the history of Bitcoin, its value since the beginning, as well as the reason for its fluctuations. This Note also looks into what makes Bitcoin and other cryptocurrency forms so concealable. This Note then analyzes the current family law in Ohio, using relevant Ohio Revised Code sections as well as case law that presents examples of how standard assets are divided amongst spouses in a divorce. These statutes and cases are also used to analyze allocation of spousal and child support. This Note then looks to how Ohio has treated parties who conceal their assets in divorce proceedings with respect to division of property, spousal support, and child support. Lastly, I analyze how other states have treated Bitcoin in divorce settlements, as well as the approach countries like the United Kingdom and Canada treat cryptocurrency. This Note finds that cryptocurrency should be treated similarly to standard assets in divorce settlements, and that the Ohio Legislature should act quickly to propose amendments to relevant family law statutes to include cryptocurrency as a standard asset.

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I. INTRODUCTION

Cryptocurrency is a new player in the game of money management. Cryptocurrency is defined as “a digital currency in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority.”¹ The top three forms of cryptocurrency as of February 2022 are Bitcoin, Ethereum, and Tether.² Bitcoin, created in 2009, is the original form of cryptocurrency and has skyrocketed in the last twelve years.³ In 2016, one could purchase a Bitcoin for about \$500; however, as of September 30, 2021, a single

¹ Pete Rizzo, ‘Cryptocurrency’ Officially Added to Oxford Dictionary Online, COINDESK (Sept. 11, 2021), <https://www.coindesk.com/markets/2014/05/20/cryptocurrency-officially-added-to-oxford-dictionary-online/>.

² Kat Tretina & John Schmidt, *Top 10 Cryptocurrencies In February 2022*, FORBES (Feb. 1, 2022), <https://www.forbes.com/advisor/investing/top-10-cryptocurrencies/> (at the time this Note was written, Bitcoin had a market cap of over \$730 billion, Ethereum had a market cap of over \$327 billion, and Tether had a market cap of over \$78 billion).

³ *Id.*

Bitcoin's price has skyrocketed to over \$43,000.⁴ More than 20 million Americans have invested in some form of cryptocurrency as of June 2021.⁵ As of April 2021, digital currency market values increased to a record breaking \$2 trillion.⁶

The existence of cryptocurrency and its dramatic fluctuations in value has allowed for many individuals to do something never before contemplated in family law: allow spouses to conceal their digital assets from each other in divorce proceedings and settlements.⁷ Because of the newness of cryptocurrency, tracking down funds is not easy, and the level of awareness amongst spouses and attorneys is minimal.⁸ Moreover, the existence of cryptocurrency in divorce settlements presents other challenges. The division is difficult because of the constantly changing value of cryptocurrency, the difficulty in figuring out how to tax cryptocurrency, and the difficulty of transferring the currency from one spouse to another.⁹

This Note will discuss the value of cryptocurrency in relation to divorce proceedings and settlements. Part I will explain what cryptocurrency is, its origins, its inconsistent value, and its history. Bitcoin will be used as an illustrative example representing issues related to all cryptocurrencies. Part II will discuss the basics of divorce law and legislation in Ohio and will explain how standard assets are typically divided amongst couples getting a divorce, as well as how those assets are considered when awarding alimony and child support. It will also further address the repercussions courts place on spouses who conceal assets in divorce proceedings. Part III will focus on illustrating situations where cryptocurrency can be hidden and how that would impact the division of assets in a divorce. Additionally, this Note will look into any existing case law regarding cryptocurrency in a divorce in Ohio and other jurisdictions. Lastly, Part IV will discuss and propose legislation regarding cryptocurrency in divorce proceedings and provide further speculation on the future of cryptocurrencies in divorce settlements.

II. WHAT IS CRYPTOCURRENCY?

A. *Cryptocurrency*

Although most people have heard of cryptocurrency, not many know what it is. "Cryptocurrency is a form of payment that can be exchanged online for goods and

⁴ Bob Mason, *The Crypto Daily – Movers and Shakers – September 26, 2021*, YAHOO! (Sept. 26, 2021), <https://www.yahoo.com/now/crypto-daily-movers-shakers-september-004746236.html>.

⁵ Kate Dore, *Spouses in divorce proceedings are using cryptocurrency to hide money. Here's how experts find it*, CNBC (June 1, 2021), <https://www.cnbc.com/2021/06/01/divorcing-spouses-are-using-cryptocurrency-to-hide-money-how-experts-find-it.html>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Kate Dore, *Dividing cryptocurrency in a divorce settlement is complicated*, CNBC (May 28, 2021), <https://www.cnbc.com/2021/05/28/dividing-cryptocurrency-in-a-divorce-settlement-is-complicated.html>.

services.”¹⁰ Many companies have formed their own types of currencies, known as “tokens.”¹¹ These tokens can be traded in exchange for goods and services that the company provides.¹² Cryptocurrencies are not backed by or convertible into a commodity, thus making them fiat currencies.¹³ Additionally, they do not exist in physical form nor is it issued by a central authority.¹⁴ Because cryptocurrencies are decentralized, they require a ledger technology, typically a blockchain, that allows for transactions.¹⁵ Most cryptocurrencies are furthering the way they operate through a model known as the proof-of-stake model.¹⁶ This model allows for owners of cryptocurrency to put up their tokens for collateral, and in return they obtain authority of the token in proportion to the amount they stake; thus, benefiting off of the risk.¹⁷

B. Bitcoin

Bitcoin is among the most popular forms of cryptocurrencies.¹⁸ Bitcoin was invented in 2008 by an unidentified programmer going by the pseudonym Satoshi Nakamoto, with the publication of the famous paper titled “Bitcoin: A Peer-to-Peer Cash System.”¹⁹ Bitcoin is often defined as “an open-source, peer-to-peer digital currency.”²⁰ Its invention is considered revolutionary because it solved the common “double-spending problem” without third-party intervention.²¹ Prior to Bitcoin, if there was no intermediary, the digital cash would simply be a computer file, like a

¹⁰ James Royal & Kevin Voigt, *What is Cryptocurrency? Here’s What You Should Know*, NERD WALLET (Dec. 3, 2021), <https://www.nerdwallet.com/article/investing/cryptocurrency-7-things-to-know>.

¹¹ *Id.* Individual units of cryptocurrencies are often referred to as coins or tokens. *Id.*

¹² *Id.*

¹³ Elizabeth A. Casale, *Cryptocurrencies and the Anonymous Nature of Transactions on the Internet* (June 1, 2015) (Honors College thesis, Oregon State University) (on file with Oregon State University Libraries & Press).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ian Bezek, *What is Proof-of-Stake, and Why is Ethereum Adopting It?*, U.S. NEWS (July 14, 2021), <https://money.usnews.com/investing/cryptocurrency/articles/what-is-proof-of-stake-and-why-is-ethereum-adopting-it>.

¹⁷ *Id.*

¹⁸ Tretina & Schmidt, *supra* note 2.

¹⁹ JERRY BRITO & ANDREA CASTILLO, BITCOIN: A PRIMER FOR POLICYMAKERS, 3, (2013); *see generally* Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, BITCOIN.ORG (Aug. 18, 2008) (illustrating Bitcoin as an idea in the cryptocurrency world).

²⁰ BRITO & CASTILLO, *supra* note 19.

²¹ *Id.* at 4.

document.²² When one sends a document through email, for example, the document does not leave the computer.²³ Thus, like a document, one could keep a copy of the digital cash even after they have sent it.²⁴ This is known as the “double-spending problem.”²⁵ Bitcoin solves this problem by distributing a “ledger” among all the users of the system through a peer-to-peer network.²⁶

Bitcoin’s entire network relies on a block chain, which is a shared public ledger.²⁷ All transactions are included in the block chain, thus allowing “Bitcoin wallets to calculate their spendable balance so that new transactions can be verified thereby ensuring they are actually owned by the spender.”²⁸ Transactions are not necessarily the buying and selling of Bitcoins, but rather they are the transfer of value between Bitcoin wallets that are then included in the block chain.²⁹

The process used to confirm pending transactions by including them in the block chain is known as “mining.”³⁰ Through mining, transactions are put in chronological order in the block chain, and neutrality of the network is protected, allowing for different computers to agree on the state of the system.³¹ Transactions are packed in a “block” that fits the cryptographic rules which prevent previous blocks from being modified, thus allowing the transaction to be confirmed.³² Mining also creates “the equivalent of a competitive lottery” which is supposed to prevent any individual from adding new blocks consecutively to the block chain, thus making it difficult for individuals to control what is included in the block chain or replace parts of the chain.³³

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 4.

²⁶ *Id.*; see also Christina Majaski, *Distributed Ledgers*, INVESTOPEDIA (Oct. 9, 2021), <https://www.investopedia.com/terms/d/distributed-ledgers.asp> (defining a distributed ledger as a “database that is consensually shared and synchronized across multiple sites, institutions, or geographies, accessible to multiple people . . .”).

²⁷ *How does Bitcoin work?*, BITCOIN, <https://bitcoin.org/en/how-it-works> (last visited Dec. 3, 2021, 2:26 PM).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (discussing that if blocks could be modified, they would invalidate all subsequent blocks because they are trying to prevent repeat codes).

³³ Nakamoto, *supra* note 19.

Transactions on the Bitcoin network are not dominant in traditional currency forms; rather, they are denominated in “Bitcoins,” which are decentralized.³⁴ This means that the value of the currency is not defined by gold or government fiat, but instead from the value that people assign to it.³⁵ The main source of value for Bitcoin is its supply and demand economics.³⁶ Like precious metals, Bitcoin’s utility is similarly limited.³⁷ However, Bitcoin is different in that it has a much larger divisibility factor compared to standard units of fiat currencies.³⁸ For example, the U.S. dollar is generally equal to 1/100 of a unit, whereas a Bitcoin can be divided up to eight decimal units called Satoshis.³⁹ Since Bitcoin’s price has continued to rise, even those who own a small fraction of a single Bitcoin have still been able to take part in Bitcoin transactions.⁴⁰

C. *The Highs and Lows of Bitcoin*

From about 2016 to the present, Bitcoin’s popularity increased dramatically. By 2021, nearly forty-six million Americans use cryptocurrencies.⁴¹ In the United States alone, about eighty-nine percent of adults have heard of Bitcoin; twenty-seven percent stating that they would consider investing in cryptocurrency and thirteen percent admitting that they already have invested.⁴² Other surveys have found that “80% of white respondents were more aware of Bitcoin than 66% of Hispanic respondents and 61% of African-American respondents.”⁴³ This demonstrates how diverse Bitcoin users are, how many people invest, and how many people have simply heard of it.

Bitcoin’s value has fluctuated drastically since about 2010 to the present. The first time we saw Bitcoin’s price increase dramatically was in 2010 when the value of a

³⁴ Kevin Voigt & Andy Rosen, *What Is Blockchain? The Technology Behind Cryptocurrency, Explained*, INVESTOPEDIA (Nov. 4, 2021), <https://www.nerdwallet.com/article/investing/blockchain>.

³⁵ *Id.*

³⁶ John P. Kelleher, *Why Do Bitcoins Have Value?*, INVESTOPEDIA (Oct. 19, 2021), <https://www.investopedia.com/ask/answers/100314/why-do-bitcoins-have-value.asp>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Josh Howarth, *How Many People Own Bitcoin? 95 Blockchain Statistics (2021)*, EXPLODING TOPICS (Sept. 21, 2021), <https://explodingtopics.com/blog/blockchain-stats>; see also *Cryptocurrency across the world*, TRIPLE-A, <https://triple-a.io/crypto-ownership/> (presenting nation-to-nation statistics and demographics to illustrate how many people across the globe are currently invested in cryptocurrency) (last visited Feb. 17, 2022).

⁴² *Id.*

⁴³ *Id.*

single Bitcoin went from a fraction of a penny to \$0.09.⁴⁴ In 2011, the price went from \$1 in April to \$32 in June; increasing roughly 3,000% in such a short time.⁴⁵ However, by November 2011, Bitcoin's price fell dramatically back down to \$2.⁴⁶ By 2012, the price had gone from \$4.85 in May to \$13.50 in August, and it stayed around that price until the next year.⁴⁷ Again, the price dramatically increased from \$13.28 to \$230 by the start of April 2013.⁴⁸ However, it was hit with a rapid decline that same month and fell to about \$70 by the end of April, only to shoot back up again to \$1,237.55 by December.⁴⁹ Before the end of 2013, it fell to about \$690.⁵⁰ The rapid changes were only the beginning of a "multiyear slump" in Bitcoin's pricing and hit a low of \$315 at the start of 2015.⁵¹ By 2017, Bitcoin had entered its fifth price bubble.⁵² Starting at \$1,000 in the beginning of the year, it fell to \$975.70 two months later, only to skyrocket again by December to a whole \$20,089.⁵³

During this time, Bitcoin began to gain traction in mainstream media and governments and economists began developing their own forms of digital currencies as a way to compete with Bitcoin.⁵⁴ By 2020, the economy had shut down due to the COVID-19 pandemic.⁵⁵ Bitcoin started off the year at \$6,965.72, then increased to \$19,157.16 by November.⁵⁶ Due to the government's distribution of stimulus checks, the entire stock market, including cryptocurrency, rebounded from the lows of the year

⁴⁴ John Edwards, *Bitcoin's Price History*, INVESTOPEDIA (Dec. 9, 2021), <https://www.investopedia.com/articles/forex/121815/bitcoins-price-history.asp>.

⁴⁵ *Id.*; see Megan DeMatteo, *Bitcoin Price History: 2009-2022*, NEXTADVISOR (Oct. 31, 2022), <https://time.com/nextadvisor/investing/cryptocurrency/bitcoin-price-history/>.

⁴⁶ Edwards, *supra* note 44; see DeMatteo, *supra* note 45.

⁴⁷ Edwards, *supra* note 44.

⁴⁸ *Id.*; see Raynor de Best, *Bitcoin (BTC) price per day from Oct. 2013 to Dec. 14, 2021*, STATISTA (Dec. 14, 2021), <https://www.statista.com/statistics/326707/bitcoin-price-index/>.

⁴⁹ Edwards, *supra* note 44; see Ian Webster, *Bitcoin Historical Prices*, U.S. FIN. REFERENCE, <https://www.in2013dollars.com/bitcoin-price> (last visited Dec. 16, 2021).

⁵⁰ Edwards, *supra* note 44.

⁵¹ *Id.*

⁵² *Id.*; see also Will Kenton, *Bubble*, INVESTOPEDIA (Oct. 10, 2020), <https://www.investopedia.com/terms/b/bubble.asp> (defining a price bubble as "an economic cycle that is characterized by the rapid escalation of market value, particularly in the price of assets").

⁵³ Edwards, *supra* note 44.

⁵⁴ *Id.*

⁵⁵ *Id.*; see *Bitcoin Price*, COINBASE, <https://www.coinbase.com/price/bitcoin> (last visited Dec. 16, 2021).

⁵⁶ Edwards, *supra* note 44.

and continued to skyrocket past their previous highs.⁵⁷ By November of 2021, Bitcoin reached an all-time high of \$68,789 per Bitcoin,⁵⁸ only to plummet shortly thereafter.⁵⁹

At the start of 2022, Bitcoin's price dropped to below \$34,000 which is the lowest it has been since July 2021.⁶⁰ Between January 20 and January 22, Bitcoin fell by \$10,000.⁶¹ This sudden decrease put millions of people's assets at risk.⁶² However, many of Bitcoin's long-term buyers seemed unfazed by the recent drop.⁶³

With Bitcoin's value being so volatile, it begs the question, why? What causes Bitcoin's sudden fluctuations? Like traditional currency forms, Bitcoin's price is influenced by supply and demand.⁶⁴ "Bitcoin's market value is primarily affected by how many coins are in circulation and how much people are willing to pay. By design, the cryptocurrency is limited to twenty-one million coins—the closer the circulating supply gets to this limit, the higher prices are likely to climb."⁶⁵ Similar to most goods and services, as Bitcoin's supply becomes limited, its demand increases, and wealthier investors hold onto their Bitcoins which prevents smaller investors from obtaining exposure to the hot commodity.⁶⁶

Bitcoin's variability and value fluctuation is driven by a multitude of factors. First, as more Bitcoin-backed securities are designed, the number held by institutions and large investors will continue to grow.⁶⁷ Thus, brokers and other financial institutions have been pushing for approval from the Securities and Exchange Commission (SEC)

⁵⁷ *Id.*

⁵⁸ *Id.*; see *Bitcoin*, COINDESK, <https://www.coindesk.com/price/bitcoin/> (last visited, Dec. 16, 2021).

⁵⁹ See COINDESK, *supra* note 58.

⁶⁰ John Puterbaugh & Ryan Haar, *Bitcoin Is Back Over \$40,000. Here's How Investors Should React to the Volatility*, NEXT ADVISOR (Feb. 17, 2022), <https://time.com/nextadvisor/investing/cryptocurrency/bitcoin-crash-continues/>.

⁶¹ Shaurya Malwa, *Long-Term Buyers Unfazed by Bitcoin's Recent Drop to \$33k*, COINDESK (Feb. 3, 2022), <https://www.coindesk.com/markets/2022/02/03/long-term-buyers-unfazed-by-bitcoins-recent-drop-to-33k/>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Nathan Reiff, *Why Is Bitcoin Volatile?*, INVESTOPEDIA (Jan. 4, 2022), <https://www.investopedia.com/articles/investing/052014/why-bitcoins-value-so-volatile.asp>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*; see also James Chen, *Asset-Backed Security (ABS)*, INVESTOPEDIA (Oct. 9, 2021), <https://www.investopedia.com/terms/a/asset-backedsecurity.asp> (defining an "asset-backed security" as "a type of financial investment that is collateralized by an underlying pool of assets—usually ones that generate a cash flow from debt, such as loans, leases, credit card balances, or receivables").

for these Bitcoin-backed securities.⁶⁸ Bitcoin's variability is thus driven by investors who hold these backed securities.⁶⁹ Although it is unclear as to how Bitcoin investors with tens of millions or more would liquidate their holdings into fiat currency, what is certain is that if they were to simply begin suddenly selling those earnings, prices would plummet and other investors would surely panic.⁷⁰ Since most exchanges have limits on the amount that can be liquidated per day, this causes a problem for successful Bitcoin investors, as they are often unable to protect their highly valued assets from the rapid liquidation.⁷¹

Second, Bitcoin's fluctuations can also be driven by the inconsistent belief in its use as a "store of value" way of value transfer.⁷² Many investors agree that Bitcoin will hold onto its value and continue to grow through its use as a hedge against inflation and an alternative to traditional value stores.⁷³

Third, media hype also plays a big role in Bitcoin's sudden changes.⁷⁴ Media outlets are constantly talking at Bitcoin and often provide information and predictions from "experts" to their viewers.⁷⁵ However, these said predictions are not always verified and are often driven by opinions.⁷⁶ Those who invest heavily in Bitcoin will often present that it will soon be worth more than what it already is, while others try to popularize and give publicity to newly invented currencies in order to take market share away from Bitcoin.⁷⁷ This media attention plays a big role in Bitcoin's price, thus benefiting those who hold a large percentage of Bitcoin coins.⁷⁸ The best example of how the media has effected Bitcoin's prices happened in late October 2021, when media outlets announced "Proshare's introduction of its Bitcoin Strategy Exchange-

⁶⁸ Reiff, *supra* note 64.

⁶⁹ *Id.*

⁷⁰ *Id.*; see also Adam Hayes, *Liquidate*, INVESTOPEDIA (May 3, 2021), <https://www.investopedia.com/terms/l/liquidate.asp> (defining liquidate as "converting property or assets into cash or cash equivalents by selling them on the open market").

⁷¹ Reiff, *supra* note 64.

⁷² *Id.* ("A store of value is an asset's function that allows it to maintain value in the future with some degree of predictability.").

⁷³ *Id.*; see also The Investopedia Team, *Hedge*, INVESTOPEDIA (Sept. 30, 2021), <https://www.investopedia.com/terms/h/hedge.asp> (defining "hedge" as "an investment that is made with the intention of reducing the risk of adverse price movements in an asset").

⁷⁴ Reiff, *supra* note 64.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

Traded Fund (EFT).⁷⁹ This led to an increase in Bitcoin's price, where it sat at an all-time high in November of 2021.⁸⁰ However, investors soon realized that the ETF was linked to Bitcoin, causing the hype to die down and prices to drop dramatically.⁸¹ By February 2022, Bitcoin's price was sitting at about \$40,000.⁸² This data illustrates the dramatic and inconsistent highs and lows of Bitcoin as well as how quickly it grew.⁸³

D. *Why is Bitcoin Easy to Conceal?*

With the growing popularity of Bitcoin and other forms of cryptocurrency, it is important to address this continued demand. Bitcoin and other cryptocurrencies have gained their popularity due to their "decentralized, secure, and nearly anonymous" characteristics.⁸⁴ "The word 'crypto' literally means concealed or secret."⁸⁵ In cryptocurrency, cryptography—which means "secret writing"—guarantees that transactions and the participants have independence from a central authority.⁸⁶ The block chain that Bitcoin uses is complex, and its complexity makes it difficult to hack or alter.⁸⁷ This gives users a secure way to interact with each other without an intermediary, such as the government or a bank.⁸⁸ Lack of intermediaries reduces the costs and fees associated with third-party transactions.⁸⁹

Although cryptocurrency has its advantages, many consider its anonymity to be a disadvantage. Addresses and transaction history of major cryptocurrencies like Bitcoin are publicly viewable.⁹⁰ However, the owners of the wallets connected to the public addresses are anonymous, thus making blockchain transactions completely

⁷⁹ Reiff, *supra* note 64; see Rakesh Sharma, *First Bitcoin ETF Begins Trading*, INVESTOPEDIA (Oct. 19, 2021), <https://www.investopedia.com/first-bitcoin-etf-begins-trading-5206196>.

⁸⁰ Reiff, *supra* note 64.

⁸¹ *Id.*

⁸² See YAHOO, <https://finance.yahoo.com/quote/BTC-USD> (last visited Jan. 27, 2023); see also COINDESK, <https://www.coindesk.com/price/bitcoin/> (last visited Feb. 17, 2022).

⁸³ *Why Is Bitcoin Volatile*, RIVER FINANCIAL, <https://river.com/learn/why-is-bitcoin-volatile/> (last visited Jan. 27, 2023).

⁸⁴ Shobhit Seth, *Explaining the Crypto in Cryptocurrency*, INVESTOPEDIA (Aug. 24, 2021), <https://www.investopedia.com/tech/explaining-crypto-cryptocurrency/>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Voigt & Rosen, *supra* note 34.

⁸⁸ *Id.*

⁸⁹ *Id.*; see Nathan Reiff, *Blockchain Won't Cut Out Intermediaries After All*, INVESTOPEDIA (Oct. 27, 2021), <https://www.investopedia.com/tech/blockchain-wont-cut-out-intermediaries-after-all/>.

⁹⁰ Voigt & Rosen, *supra* note 34.

transparent and anonymous at the same time.⁹¹ Due to the anonymity of the wallets, it makes it easier for people to conceal what they have.⁹² Additionally, the cryptography methods that cryptocurrency block chains use play a big role in the anonymity of transactions.⁹³ Put simply, “cryptography is a technique used to send secure messages between two or more participants . . .”⁹⁴ The sender uses an algorithm to hide the message, and sends it to the receiver who then decrypts it to generate the original message.⁹⁵ Encryption keys are “the most important” aspect of cryptography because they make the transaction unreadable to those who are not the recipient.⁹⁶ These keys are what make cryptocurrency, crypto (or secret).⁹⁷ We can analogize the way cryptography works to a radio signal.⁹⁸ For example, a radio broadcast in your car is very different from radio communication between soldiers in combat, in that the former is public information and the latter is secure and encrypted.⁹⁹ Radio communications between soldiers are received by and known only to those intended participants, and not the whole world.¹⁰⁰ Cryptography in the cryptocurrency world works in a similar way.¹⁰¹

Despite the appearance of anonymity, Bitcoin and other cryptocurrencies may not use such encrypted messages since most of Bitcoin’s transactions are public.¹⁰² While Bitcoin does disguise your personal information, it does not disguise the address of your “crypto wallet.”¹⁰³ Thus, rather than being anonymous, Bitcoin users are

⁹¹ *Id.*

⁹² Seth, *supra* note 84.

⁹³ See Fergus O’Sullivan, *How Anonymous Is Bitcoin?*, HOW-TO GEEK (July 30, 2021), <https://www.howtogeek.com/741484/how-anonymous-is-bitcoin/>.

⁹⁴ Seth, *supra* note 84.

⁹⁵ *Id.*

⁹⁶ *Id.*; see also Jake Frankenfield, *Private Key*, INVESTOPEDIA (Nov. 27, 2021), <https://www.investopedia.com/terms/p/private-key.asp> (defining a “private key” as “a secret number that is used in cryptography, similar to a password. In cryptocurrency, private keys are also used to sign transactions and prove ownership of a blockchain address.”).

⁹⁷ Seth, *supra* note 84.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Seth, *supra* note 84.

¹⁰³ Nica Latto & Joseph Regan, *How Safe Is Bitcoin, Really?*, AVG.COM (Oct. 8, 2021), <https://www.avg.com/en/signal/is-bitcoin-safe>; see also *Cryptocurrency wallet*, BANKRATE, <https://www.bankrate.com/glossary/c/cryptocurrency-wallet/> (defining a cryptocurrency wallet as “a computer app that allows [owners] to spend and receive the currency”) (last visited Dec. 16, 2021).

“pseudonymous,” meaning that the address of your crypto wallet could be used to track down personal information.¹⁰⁴ Additionally, because ledgers are public, all one would need to find your transaction on the ledger is to know how much you spent and where you spent it.¹⁰⁵ Moreover, governments can subpoena this information,¹⁰⁶ so in a divorce proceeding, if the attorney’s request a spouse’s cryptocurrency information, it is not impossible to find.¹⁰⁷ Nevertheless, people in divorce proceedings still try to conceal it.¹⁰⁸ This brings us to our next Part, which addresses Ohio divorce law, and how regular assets are treated in divorce proceedings.

III. ASSETS IN DIVORCE SETTLEMENTS

A. *Division of Marital and Separate Property in Ohio*

Before we enter into our deep dive on Ohio divorce law, it is important to note the difference between separate property states and community property states. It is important to make the distinction between community property states and separate property states, as they have different methods of treating assets acquired during the marriage upon divorce.¹⁰⁹ Generally, in a community property state, *all* property acquired by husband and wife during the time of the marriage is owned jointly.¹¹⁰ Thus, upon divorce, both husband and wife are entitled to equal division of the property, regardless of who acquired it.¹¹¹ States that are considered community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.¹¹²

Conversely, in a separate property state like Ohio, common law is implemented to identify how the ownership of assets should be divided in divorces.¹¹³ Ohio and other separate property states make the distinction between marital property, or property acquired during the marriage, and separate property, or property acquired separately

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Dore, *supra* note 5.

¹⁰⁸ *Id.*

¹⁰⁹ Patrick Hicks, *Estate Planning for Community Property vs. Separate Property*, TRUSTANDWILL.COM, <https://trustandwill.com/learn/community-property-vs-separate-property> (last visited Jan. 28, 2023).

¹¹⁰ *Id.* (discussing that today, there are exceptions to what is considered community property).

¹¹¹ *Id.*

¹¹² Emily Starbuck Gerson, *What is a Community Property State and How Does it Impact Finances?*, EXPERIAN.COM (April 27, 2022), <https://www.experian.com/blogs/ask-experian/what-is-community-property-state/>.

¹¹³ Hicks, *supra* note 109.

from the marriage.¹¹⁴ The Ohio Revised Code define these terms more specifically, however, it is important to first point them out in general terms.¹¹⁵ The only time property is really divided equally amongst spouses in separate property states is when they are both listed as owners of the property, or that property was jointly acquired.¹¹⁶ However, in most instances, separate property states favor an *equitable* division of assets rather than equal.¹¹⁷ Now that we have considered the differences between separate and community property states, we can move on to the specifics of the Ohio Revised Code and Ohio divorce law.

Section 3105.171 of the Ohio Revised Code distinguishes between marital and separate property.¹¹⁸ Marital property includes all real and personal property, along with retirement benefits that were acquired during the marriage.¹¹⁹ It also includes any interest that either or both spouses have in the real or personal property, and all income and appreciation on separate property due to the labor of either or both spouses that occurred during the marriage.¹²⁰ Under subsection (C)(1), the statute says that except for what is provided in subsection (E), the division of marital property shall be equal.¹²¹ If equal division of marital property is inequitable, however, then the court shall not divide the marital property equally, but instead divide it between the spouses in the manner the court determines to be equitable.¹²²

Separate property includes inheritances, any real or personal property or interest in that property that was acquired after legal separation, any property or interest in property that is excluded by a valid antenuptial agreement, any compensation to a spouse for a spouse's personal injury, and any gift of property or interest in property that is made after the date of the marriage and is proven by clear and convincing evidence to have been given to only one spouse.¹²³ Ohio courts also take into consideration a multitude of factors when determining whether to make and the

¹¹⁴ *Id.*

¹¹⁵ OHIO REV. CODE ANN. § 3105.171.

¹¹⁶ *Id.*

¹¹⁷ Richard Stim, *Property Division by State*, DIVORCENET, https://www.divorcenet.com/states/nationwide/property_division_by_state (last visited Jan. 27, 2023).

¹¹⁸ OHIO REV. CODE ANN. § 3105.171; *see generally* Melissa Heinig, *Ohio Divorce: Dividing Property*, DIVORCENET, <https://www.divorcenet.com/resources/divorce/marital-property-division/ohio-divorce-dividing-property> (last visited Jan. 27, 2023) (summarizing divorce law in Ohio, and further explaining the differences between marital and separate property).

¹¹⁹ OHIO REV. CODE ANN. §3105.171.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

amount of any distributive award under this section.¹²⁴ A distributive award means any payment or payments in real or personal property that are payable in a lump sum or in fixed amounts over time, that are made from separate property, and that are not made from marital property and do not constitute payments of spousal support.¹²⁵

Ohio has a multitude of case law which outlines the division of property and the differences between marital property and separate property in Ohio.¹²⁶ In *Middendorf v. Middendorf*,¹²⁷ the Ohio Supreme Court held that an increase in the value of separate property, due to a spouse's active efforts is considered marital property pursuant to section 3105.171.¹²⁸ The Court upheld the trial court's finding that the husband's interest in a stockyard had increased during the marriage, and the wife should be rewarded exactly one-half of that increase.¹²⁹ The opposite happened in *Schumann v. Schumann*,¹³⁰ where the Eighth Appellate District gave the wife no appreciation in her husband's business, because she could not prove that it had increased in value during the marriage.¹³¹ In *Herron v. Herron*,¹³² although the parties agreed that the business stock was the wife's separate property, the court of appeals affirmed the trial court's finding that twenty-five percent of the appreciation the business stock was marital property.¹³³ Although the wife was part of the reason for the growth of the company, she was not the sole reason for the growth.¹³⁴ The trial court found that she only contributed to twenty-five percent of the growth because there were four other executives that were part of the team effort.¹³⁵ Each of these cases provide very general examples for how standard marital and separate property is divided amongst divorcing spouses in Ohio.¹³⁶

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ See, e.g., *Middendorf v. Middendorf*, 696 N.E.2d 575 (Ohio 1998).

¹²⁷ *Id.* at 579.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Schumann v. Schumann*, Nos. 83404, 83631, 2005 WL 77087 (Ohio Ct. App. Jan. 13, 2005).

¹³¹ *Id.* at *3.

¹³² *Herron v. Herron*, No. 1-04-23, 2004 WL 2426307 (Ohio Ct. App. Nov. 1, 2004).

¹³³ *Id.* at *5-6.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ See, e.g., *Middendorf v. Middendorf*, 696 N.E.2d (Ohio 1998).

So, what happens if a spouse tries to conceal their property in a divorce? Under Ohio law, spouses must fully disclose all of their assets during a divorce.¹³⁷ Often times, however, spouses fail to disclose what they have to each other for reasons like resentment, hatred, or for the simple fact that they feel as though they cannot afford equitable division of assets.¹³⁸ However, hiding assets in a divorce is not without its consequences.¹³⁹ Subsections (E)(4) and (E)(5) of Section 3105.171 go hand in hand.¹⁴⁰ Section 3105.171(E)(4) states that “if a spouse is engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets, the court may compensate the offended spouse within a distributive award or with a greater award of marital property.”¹⁴¹ Furthermore, section 3105.171(E)(5) provides that:

If a spouse has substantially and willfully failed to disclose marital property, separate property, or other assets, debts, income, or expenses as required under division (E)(3) of this section, the court may compensate the offended spouse with a distributive award or with a greater award of marital property not to exceed three times the value of the marital property, separate property, or other assets, debts, income, or expenses that are not disclosed by the other spouse.¹⁴²

In other words, you could end up owing your ex-spouse a lot and losing a lot if you decide to hide what you have.¹⁴³

Ohio case law provides plenty of examples where spouses have been punished, for lack of a better term, for hiding their assets.¹⁴⁴ For example, in *Speece v. Speece*,¹⁴⁵ the court held that the trial court did not abuse its discretion in allocating an equitable division of property to the wife due to the financial misconduct of the husband.¹⁴⁶ Here, the court found that the husband engaged in financial misconduct by being

¹³⁷ See OHIO REV. CODE ANN. § 3105.171(E)(3) (stating “the court shall require each spouse to disclose in a full and complete manner all marital property, separate property, and other assets, debts, income, and expenses to their spouse”).

¹³⁸ Linda Lawrence, *Consequences of Hiding Assets During a Divorce*, LAWRENCE L. OFF. (May 26, 2017), <https://www.ohio-family-law.com/2017/05/consequences-of-hiding-assets-during-a-divorce/>.

¹³⁹ *Id.*

¹⁴⁰ OHIO REV. CODE ANN. § 3105.171(E)(4); *Id.* § 3105.171(E)(5).

¹⁴¹ *Id.* § 3105.171(E)(4).

¹⁴² *Id.* § 3105.171(E)(5).

¹⁴³ See generally Lawrence, *supra* note 138 (summarizing negative financial effects of attempting to hide assets).

¹⁴⁴ See, e.g., *Speece v. Speece*, 167 N.E.3d 1 (Ohio Ct. App. 2021).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 9.

uncooperative at hearings, and claimed that property and vital business records were destroyed.¹⁴⁷ Additionally, there was evidence that he transferred millions of dollars of marital funds into several accounts which he failed to disclose during discovery.¹⁴⁸ The court concluded that equal distribution would not be equitable due to the financial misconduct, and thus the trial court was within its discretion to allocate the assets in the way it believed to be equitable pursuant to O.R.C. 3105.171(E)(4).¹⁴⁹

In *Berger v. Berger*,¹⁵⁰ the court affirmed the trial court's monetary sanctions on the husband for failing to comply with the discovery orders.¹⁵¹ Here, the husband denied the wife access to their marital trust accounts; and during litigation, he refused to comply with the discovery requests making the "process of evaluating the marital assets difficult and protracted."¹⁵² The court concluded that the trial court's monetary sanctions on the husband for his failure to comply with discovery and concealing what he had from the wife was reflected in the record, and thus, was well within the trial court's discretion.¹⁵³

Conversely, in *Avent v. Avent*,¹⁵⁴ the court found that the trial court had erred in finding that the wife failed to prove her financial accounts as separate property.¹⁵⁵ Here, the trial court found that all of the wife's accounts were marital because she had failed to adequately trace her separate property owned prior to the marriage to her present assets.¹⁵⁶ The appellate court, however, agreed with the wife in that she should not have been required to trace assets that were never commingled with her husband's funds.¹⁵⁷ The court found that her accounts had always been separately maintained and thus, remained to be her own separate property which required no tracing.¹⁵⁸ Additionally, since tracing of assets was not required and there was no misconduct on the wife's part under 3105.171(F), the court found that the trial court had erred in distributing a portion of the wife's property to the husband.¹⁵⁹ The cases above

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 11; *see* OHIO REV. CODE ANN. § 3105.171.

¹⁵⁰ *Berger v. Berger*, No. C-030631, 2004 WL 2367988 (Ohio Ct. App. Oct. 22, 2004).

¹⁵¹ *Id.* at *1.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Avent v. Avent*, 849 N.E.2d 98 (Ohio Ct. App. 2006).

¹⁵⁵ *Id.* at 100-01.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 102.

¹⁵⁹ *Id.*

provide clear examples of how assets are divided amongst spouses when the court finds that misconduct has occurred.¹⁶⁰

B. Spousal Support and Entitlements

Under Ohio Revised Code Section 3105.18, “spousal support” is defined as “any payment or payments made to a spouse or former spouse”¹⁶¹ Spousal support does not include any payment made to a spouse or former spouse as a division or distribution of property or a distributive award under Section 3105.171.¹⁶² Awards of spousal support may be allowed in real property, personal property, or by decreeing a sum of money, as the court considers equitable.¹⁶³ Many factors are taken into consideration by the courts when determining an award of spousal support.¹⁶⁴ Those factors include: (1) the relative earning abilities of the parties; (2) their ages, physical, mental, and emotional wellbeing; (3) the retirement benefits of the parties; (4) duration of the marriage; (5) level of educations; and (6) the relative assets and liabilities of the parties, etc.¹⁶⁵

Ohio has multiple cases which provide examples of how spousal support is awarded based on their earning abilities.¹⁶⁶ In *Godfrey v. Godfrey*,¹⁶⁷ the court held that the trial court did not abuse its discretion in awarding the wife spousal support for the next seven years.¹⁶⁸ Here, the court found that the husband’s earning ability was substantially greater than the wife’s and further found that the wife had lost income earning opportunity as a result of her marital responsibilities.¹⁶⁹ Similarly, in *Kucmanic v. Kucmanic*,¹⁷⁰ the court upheld the trial court’s award of spousal support after finding that the husband had much greater earning abilities than the wife, making about \$55,000 a year whereas the wife totaled at about \$9,400.¹⁷¹

¹⁶⁰ See, e.g., *Speece v. Speece*, 167 N.E.3d 1 (Ohio Ct. App. 2021).

¹⁶¹ OHIO REV. CODE ANN. § 3105.18.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ See, e.g., *Godfrey v. Godfrey*, No. 63602, 1994 WL 11685 (Ohio Ct. App. Jan. 13, 1994).

¹⁶⁷ *Godfrey v. Godfrey*, No. 63602, 1994 WL 11685 (Ohio Ct. App. Jan. 13, 1994).

¹⁶⁸ *Id.* at *4.

¹⁶⁹ *Id.*

¹⁷⁰ *Kucmanic v. Kucmanic*, No. 66851, 1995 Ohio App. LEXIS 771 (Ohio Ct. App. Mar. 2, 1995).

¹⁷¹ *Id.* at *4.

What happens to spousal support when spouses hide how much they make? In *Volk v. Volk*,¹⁷² the court found that the trial court did not err in denying the wife spousal support.¹⁷³ In that case, the wife asserted that the trial court had underestimated her ex-husband's income, and that the business he owned had a much higher value before he had transferred thousands of dollars to his new business.¹⁷⁴ The court held that even if the trial court had underestimated the husband's income, she failed to prove that she was prejudiced as a result.¹⁷⁵ Additionally, she could not prove that the transferred assets were not accounted for in the calculation done by the trial court.¹⁷⁶ Thus, the trial court did not err in denying spousal support to the wife.¹⁷⁷

Similarly, in *Sauer v. Sauer*,¹⁷⁸ the court disagreed with the wife, who claimed that she was entitled to spousal support because her husband had allegedly hid assets from her, and that she suffered from depression due to his "abuse and affairs."¹⁷⁹ The court, however, reasoned that none of what the wife raised justified an award of spousal support under Section 3105.18(C)(1).¹⁸⁰ The court stated that once the trial court determines the support needed, the court has to decide on a reasonable amount, and the amount she received here was indeed reasonable.¹⁸¹ Additionally, the court found no evidence that the husband hid any assets.¹⁸² Thus, the amount awarded to the wife was reasonable.¹⁸³

Lastly, in *Poindexter v. Poindexter*,¹⁸⁴ the court of appeals held that the trial court's decision concerning spousal support was "hampered" by the wife's nondisclosure of her financial information.¹⁸⁵ The court found that throughout the proceedings, the husband tried to gather information from the wife about her financial

¹⁷² *Volk v. Volk*, No. 21540, 2004 WL 573952, (Ohio Ct. App. March 24, 2004).

¹⁷³ *Id.* at *4.

¹⁷⁴ *Id.* at *3.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Sauer v. Sauer*, No. 68925, 1996 WL 284873, (Ohio Ct. App. May 30, 1996).

¹⁷⁹ *Id.* at *2.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 3.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Poindexter v. Poindexter*, No. 98AP-1150, 2000 WL 335742, (Ohio Ct. App. March 31, 2000).

¹⁸⁵ *Id.* at *7.

assets, but his discovery efforts were unsuccessful.¹⁸⁶ The husband presented evidence that throughout their marriage, the wife hid information about her assets and large sums of cash in their home.¹⁸⁷ While the wife claimed that she deserved spousal support due to her permanent disability, the court found that totally disabled spouses are not automatically entitled to spousal support.¹⁸⁸ Additionally, the record showed that the wife hid assets from the husband throughout the marriage, and never testified, nor responded to discovery requests.¹⁸⁹ The court believed that as a result of her concealments, it was possible that she had substantial assets, and thus, the trial court did not err in deciding not to award her spousal support.¹⁹⁰ The cases above provide examples of how spousal support is awarded to spouses who conceal their assets or engage in financial misconduct during the divorce proceedings.¹⁹¹

C. Child Support Orders

Not only are spouses responsible for spousal support, but, in a divorce with minor children, their assets are also taken into consideration when determining child support. Ohio Revised Code Section 3103.03(A) provides that “[e]ach married person must support the person’s self and spouse out of the person’s property or by the person’s labor . . . [t]he biological or adoptive parent of a minor child must support the parent’s minor children out of the parent’s property or by the parent’s labor.”¹⁹² An “administrative child support order” is defined as “any order issued by a child support enforcement agency for the support of a child”¹⁹³ Child support orders are issued because children have a right to receive support from both of their parents.¹⁹⁴ Parents can either have full or joint custody of their children; and under either form of custodianship, both parents are always responsible for child support.¹⁹⁵ If a parent has full custody, the “noncustodial parent” makes payments to the “custodial parent” for

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*; see also *Young v. Young*, No. 96-CO-26, 1998 WL 30074, (Ohio Ct. App. Jan 22, 1998) (holding that spouses who are disabled and do not have the ability to earn income in the future are not automatically entitled to spousal support simply because the other spouse is presently working, earning income, or has potential to earn income).

¹⁸⁹ *Poindexter*, 2000 WL 335742, at *7.

¹⁹⁰ *Id.*

¹⁹¹ See, e.g., *Volk v. Volk*, No. 21540, 2004 WL 573952 (Ohio Ct. App. March 24, 2004).

¹⁹² OHIO REV. CODE ANN. § 3103.03(A).

¹⁹³ *Id.* § 3119.01(B)(1).

¹⁹⁴ Melissa Heinig, *Child Support in Ohio*, DIVORCE NET, <https://www.divorcenet.com/resources/child-support/ohio.htm> (last visited Jan. 27, 2023).

¹⁹⁵ *Id.*

a specified amount under a child support order ordered by the court.¹⁹⁶ On the other hand, when parents split custody, the parent with the higher income is likely to make the child support payments at a rate that makes up the difference between what each parent provides.¹⁹⁷

Ohio courts take into consideration a multitude of factors when determining child support awards.¹⁹⁸ Calculation of child support obligations are outlined in Ohio Revised Code Section 3119.01.¹⁹⁹ Gross income, as defined under subsection (C)(12), includes “the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes income from salaries, wages, overtime pay, and bonuses”²⁰⁰ Things like “personal earnings”²⁰¹ and “potential income”²⁰² are also taken into consideration when determining a child support award.²⁰³ Potential income includes both “imputed income that the court or child support agency determines that parent would have earned if fully employed”²⁰⁴ and “imputed income from any nonincome-producing assets of a parent”²⁰⁵ Imputed income that a parent would have earned if fully employed is determined by factors like the parent’s prior employment experience, education, special skills and training, the increased or decreased earning capacity of the parent.²⁰⁶

¹⁹⁶ *Id.* The idea being that the custodial parent is still paying child support, but because they are responsible for the child majority of the time and therefore the law assumes that the custodial parent is spending the required amount directly on the child. *See also Custodial Parent*, CORNELL L. SCH., https://www.law.cornell.edu/wex/custodial_parent (June, 2021) (defining custodial parent as “the parent that lives with and cares for their minor child for all (sole physical custody) or most (primary physical custody) of the time”); *see also Non-Custodial Parent*, CORNELL L. SCH., https://www.law.cornell.edu/wex/noncustodial_parent (June, 2020) (defining noncustodial parent as “the parent whose children do not live with them for a majority of the time”).

¹⁹⁷ Heinig, *supra* note 194.

¹⁹⁸ OHIO REV. CODE ANN. § 3119.01.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* § 3119.01(C)(12).

²⁰¹ *Id.* § 3119.01(C)(16) (defining personal earnings as “compensation paid or payable for personal services, however denominated, and includes wages, salary, commissions, bonuses, draws against commissions, profit sharing, vacation pay, or any other compensation”).

²⁰² *Id.* § 3119.01(C)(17).

²⁰³ *Id.* § 3119.01(C)(16); *Id.* § 3119.01(C)(17).

²⁰⁴ OHIO REV. CODE ANN. § 3119.01(C)(17)(a).

²⁰⁵ *Id.* § 3119.01(C)(17)(b).

²⁰⁶ *Id.* § 3119.01(C)(17)(a)(i)–(xi).

Ohio case law provides adequate examples of how child support is awarded, by what means, and under what conditions.²⁰⁷ In *Rock v. Cabral*,²⁰⁸ the trial court's decision of imputing the mother's income of \$14,000 per year was upheld.²⁰⁹ Here, the court found that the child support award was to be modified because the mother no longer had custody of the minor child, the mother had remarried, and had a Bachelor of Arts degree in accounting that she was not utilizing.²¹⁰ Taking all these factors into consideration, the court of appeals held that the trial court did not abuse its discretion when it found that the mother was voluntarily underemployed, and further did not abuse its discretion when imputing \$14,000 of income to the mother for purposes of calculating her child support obligation.²¹¹

Similarly, in *France v. France*,²¹² the court found that the trial court did not abuse its discretion when it terminated the father's child support obligation.²¹³ Here, the father, and residential parent of the ex-couple's five children, filed a motion to terminate or substantially reduce his child support obligation because of his diminishing financial situation.²¹⁴ The father testified that he had paid copious amounts of child support to the mother for a house, the children's schooling and non-schooling expenses, clothing, athletic gear, summer camps, etc., despite being the residential parent.²¹⁵ The mother testified that she was unemployed and admitted into evidence a list of her debts.²¹⁶ The trial court, however, agreed with the father, relying on Ohio Revised Code Section 3119.07(A)²¹⁷ to terminate his child support obligations.²¹⁸ The court of appeals reasoned that the mother should have instead been considered the obligor, as she was not the residential parent.²¹⁹

²⁰⁷ See, e.g., *Rock v. Cabral*, 616 N.E.2d 218 (Ohio Ct. App. 1993).

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 222.

²¹⁰ *Id.* at 220.

²¹¹ *Id.* at 221.

²¹² *France v. France*, 1st Dist. Hamilton Nos. C-100468, C-100489, 2011-Ohio-3025 (Ohio Ct. App. June 22, 2011).

²¹³ *Id.* at *3.

²¹⁴ *Id.* at *1.

²¹⁵ *Id.* at *2.

²¹⁶ *Id.* at *9.

²¹⁷ OHIO REV. CODE ANN. § 3119.07(A) (providing in part “[e]xcept when the parents have split parental rights and responsibilities, a parent’s child support obligation for a child for whom the parent is the residential parent and legal custodian shall be presumed to be spent on that child and *shall not* become part of a child support order . . .”) (emphasis added).

²¹⁸ *France*, 2011 WL 1935838 at *3.

²¹⁹ *Id.* at 4.

So, what happens if either the obligor parent or the obligee parent hides their income to avoid child support payments or get higher child support payments respectively? Failure to provide the court with correct information about one's income can constitute child support fraud.²²⁰ At child support hearings, each parent is required to submit a financial affidavit confirming their sources and amounts of income.²²¹ This is done under oath; thus, providing false information is considered perjury.²²² As a consequence of committing child support fraud, often times courts will immediately adjust the child support amount according to the actual income, and the obligor can be ordered to pay back any amount unpaid during the time that they were not paying an accurate amount.²²³

Ohio courts have dealt with the issue of child support fraud for many years. In *Osborne v. Osborne*,²²⁴ the court of appeals agreed with the trial courts holding that the father had committed fraud when he misrepresented his annual income on the child support worksheet filed at the time of the divorce.²²⁵ Here, the father indicated that his annual gross income was \$16,800.²²⁶ Pursuant to the child support guidelines, he was supposed to pay \$167.50 per child per month; however, the court reduced it to \$100 per child per month.²²⁷ A few months later, the mother filed a motion requesting an order to increase the amount of child support, claiming that the gross annual income originally indicated by the father was incorrect, since he actually earned \$26,800 per year.²²⁸ The father eventually admitted that when he completed and signed the child support worksheet, he was indeed making approximately \$28,000.²²⁹ The trial court

²²⁰ Christopher Dionisio, *Child Support Fraud: What You Need to Know*, DIONISIO LAW (June 25, 2019), <https://www.dionisio.com/child-support-fraud-what-you-need-to-know>.

²²¹ *Id.*

²²² *Id.*; see *Perjury*, OXFORD DICTIONARY (3d ed. 2000) (defining perjury as “the offense of willfully telling an untruth in a court after having taken an oath or affirmation”). Perjury convictions can result in a large fine or even end in a jail sentence depending on the severity. See also Dionisio, *supra* note 220.

²²³ Dionisio, *supra* note 220.

²²⁴ *Osborne v. Osborne*, 611 N.E.2d 1003 (Ohio Ct. App. 1992).

²²⁵ *Id.* at 1006.

²²⁶ *Id.* at 1005.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

found that the child support worksheet filed by the father was fraudulent, and thus ordered him to pay \$207.45 per child per month.²³⁰ The court of appeals affirmed.²³¹

Similarly, in *Gross v. Gross*,²³² the court of appeals affirmed the trial courts vacation of a child support order on the basis of fraud.²³³ Here, the mother filed a motion for relief from judgment pursuant to Ohio Civil Rule 60(B)(2) and (3) claiming that newly discovered evidence showed that her former husband had perpetrated fraud.²³⁴ The mother brought in a local newspaper article from November 1985, which featured the gasoline station owned by the father and his new wife.²³⁵ The court found that the value of the gas station was more substantial than what was indicated at the original hearing, and thus, granted the mother's motion for relief from judgment on the grounds of fraud.²³⁶ The court then ordered the father to pay fifteen dollars per week for child support.²³⁷

The cases above provide examples for how Ohio courts have dealt with parents who misrepresent their income in order to get out of their child support obligations.²³⁸ It is clear that the concealing of assets in a divorce proceeding creates a substantial issue for Ohio courts.²³⁹ Taking the examples above into consideration, we now move onto our next Part which looks to any existing case law outside of Ohio that deals with the division of Bitcoin, or Bitcoin's use as spousal support or child support awards in divorce proceedings.

IV. WHAT BITCOIN LOOKS LIKE IN A DIVORCE

A. *Case Law in Other United States Jurisdictions*

With the rise of Bitcoin and more people continuing to invest, many states and jurisdictions have already set the tone on how they plan to treat cryptocurrency in

²³⁰ *Osborne*, 611 N.E.2d at 1005. Pursuant to the child support guidelines, the father was actually supposed to pay \$274.95 per child per month. However, since the parties mutually agreed to lower the guideline amount, he only had to pay \$207.45 per child per month. *Id.*

²³¹ *Id.* at 1010.

²³² *Gross v. Gross*, No. 86-CA-51, 1987 WL 10641 (Ohio Ct. App. April 28, 1987).

²³³ *Id.* at *1.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* at *3.

²³⁷ *Id.* at *1.

²³⁸ *See, e.g.*, *Osborne v. Osborne*, 611 N.E.2d 1003 (Ohio Ct. App. 1992); *Gross v. Gross*, No. 86-CA-51, 1987 WL 10641 (Ohio Ct. App. April 28, 1987).

²³⁹ *See, e.g.*, *Osborne*, 611 N.E.2d at 1003.

divorce proceedings going forward.²⁴⁰ Colorado, for example, treats Bitcoin the same as any other asset, dividing it as either marital or separate property.²⁴¹ This is as of right now at least. Many attorneys throughout the nation see the rise of cryptocurrency as a threat, given that there are no specific laws regarding cryptocurrency protection during a divorce.²⁴² Given that there has not been any real legislation, attorneys and courts are required to rely on case law to figure out how the law treats cryptocurrency in divorces.²⁴³

In California, in the case of *In re Marriage of DeSouza*,²⁴⁴ the court of appeals affirmed the trial courts finding that the husband failed to disclose material information about his cryptocurrency investments and that the failure to disclose caused impairment to the wife's community interest.²⁴⁵ Here, the husband had negligently worked with a Japanese Bitcoin exchange which was known by the Bitcoin community to have lost thousands of Bitcoins to hacking and embezzlement, and eventually the company went bankrupt.²⁴⁶ When the divorce arose, the Bitcoins were ordered to be community property and were to be divided evenly between the parties.²⁴⁷ However, when the wife sought her half of the community Bitcoins, only then did the husband admit to them being "tied up" in the bankruptcy.²⁴⁸ His failure to disclose led to impairment in the wife's community interest.²⁴⁹

In Connecticut, in the case of *Leonova v. Leonov*,²⁵⁰ the court concluded that the trial court properly found the husband in contempt for investing in cryptocurrency as

²⁴⁰ See generally Sean M. Cleary, *Finding and Dividing Hidden Crypto Assets in a Divorce*, WEALTH MANAGEMENT (May 16, 2022), <https://www.wealthmanagement.com/high-net-worth/finding-and-dividing-hidden-crypto-assets-divorce>.

²⁴¹ Natalie Lamy, *Bitcoins and Divorce: How to Find, Value, and Divide Them*, THE HARRIS LAW FIRM, <https://www.harrisfamilylaw.com/blog/2021/july/bitcoins-and-divorce-how-to-find-value-and-divid/> (last visited, Jan. 8, 2023).

²⁴² See Kelly A. Smith, *How cryptocurrency assets are becoming a new battleground in divorce disputes*, BANKRATE (March 10, 2019), <https://www.bankrate.com/personal-finance/divorce-cases-cryptocurrency-assets-new-battleground-bitcoin/>.

²⁴³ See, e.g., *What Happens to Cryptocurrencies in Divorce?*, BLOOD LAW PLLC (May 11, 2022), <https://www.blood-law.com/blog/2022/may/what-happens-to-cryptocurrencies-in-divorce-/>; *Cryptocurrency and Divorce: Basics of Bitcoin and Crypto in a Divorce*, GRIFFITHS LAW PC (June 14, 2022), <https://www.griffithslawpc.com/blog-articles/cryptocurrency-and-divorce-basics-of-bitcoin-and-crypto-in-a-divorce/>.

²⁴⁴ See generally *In re Marriage of DeSouza*, 266 Cal. Rptr. 3d 890 (Cal. Ct. App. 2020).

²⁴⁵ *Id.* at 898.

²⁴⁶ *Id.* at 892–93.

²⁴⁷ *Id.* at 893.

²⁴⁸ *Id.*

²⁴⁹ See generally *DeSouza*, 266 Cal. Rptr. 3d at 893.

²⁵⁰ See *Leonova v. Leonov*, 242 A.3d 713 (Conn. App. Ct. 2020).

a violation of the automatic orders of the court while the divorce was pending.²⁵¹ Additionally, the court did not abuse its discretion when it ordered the husband to reimburse the plaintiff for one half for the loss he incurred as a result of the cryptocurrency investment.²⁵² In this case, the husband had invested in cryptocurrency during the dissolution of marriage proceeding.²⁵³ The court had found him to be in contempt of court because the investment did not qualify as an exception to the automatic order prohibiting the disposal of property under Section 25-5 of the Connecticut Practice Book.²⁵⁴ The court found that he did not request permission from his wife before he purchased the cryptocurrency, and that he did not have accounts the purchase cryptocurrency prior to commencement of action.²⁵⁵ Thus, he was ordered to reimburse her for one half of the losses he incurred.²⁵⁶

In Washington, in the *Matter of Marriage of Liu and Chang*,²⁵⁷ the father argued that the mother's attorney committed misconduct or misrepresentation by valuing the father's Bitcoin at \$328,903.²⁵⁸ He argued that the Bitcoin's value was \$0 because he had sold it, and thus, the trial court erred in awarding the mother the family home and other assets while awarding him the Bitcoin worth.²⁵⁹ The trial court, however, denied his motion to vacate on the grounds that he failed to pursue the Bitcoin valuation issue at trial, he failed to appeal, and he failed to persuasively explain why he did not pursue the issue earlier.²⁶⁰ The appellate court affirmed this decision.²⁶¹

²⁵¹ *Id.* at 737.

²⁵² *Id.*

²⁵³ *Id.* at 721.

²⁵⁴ *Id.* at 718, 735; *see also* CONN. PRAC. BOOK § 25-5(b)(1) (stating the exception as “[i]n all cases involving a marriage or civil union, whether or not there are children: (1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without consent of the other party in writing, or an order of a judicial authority, any property, except in the *usual course of business* or for customary and usually household expenses or for reasonable attorney's fees in connection with this action”) (emphasis added).

²⁵⁵ *Leonova*, 242 A.2d at 721.

²⁵⁶ *Id.* at 736.

²⁵⁷ *See generally* *Matter of Marriage of Liu and Chang*, 16 Wash. App. 2d 1059 (Wash. Ct. App. 2021) (WestLaw).

²⁵⁸ *Id.* at *2.

²⁵⁹ *Id.*

²⁶⁰ *Id.* at *3.

²⁶¹ *Id.*

One recent case really speaks to the problem of concealing cryptocurrency assets in a divorce proceeding.²⁶² In Nevada, in the matter of *LaFond v. LaFond*,²⁶³ the court of appeals found that the district court did not abuse its discretion in concluding that the decree intended to award the parties equal shares of the cryptocurrency, and that the shares should be divided based on the value of the cryptocurrency at the time of the divorce.²⁶⁴ In this case, the decree of divorce between the parties intended to equally divide the \$80,000 worth of cryptocurrency that husband accumulated during the marriage.²⁶⁵ However, the court went on to find that the husband had misrepresented the value of the cryptocurrency, and it was actually worth about \$1 million at the time of divorce.²⁶⁶ Since husband had misrepresented the value of those assets at the time of the divorce, he thus failed to distribute the wife her fifty percent interest in the cryptocurrency and failed to timely provide her information as to the value of the assets.²⁶⁷ Thus, the district court found that the wife had reasonably relied on the husband's misrepresentations of the value of the cryptocurrency, and therefore, should be awarded fifty percent of the cryptocurrency accounts that existed at the time the decree of divorce was entered, which again, was significantly more than \$80,000.²⁶⁸

Because cryptocurrency is such a recent phenomenon, case law is scarce throughout the United States regarding these legal issues.²⁶⁹ As of right now, many states have been treating cryptocurrency as an asset rather than income, as seen above.²⁷⁰ The Nevada case emphasizes the notion that more and more states are beginning to see in divorce cases where concealing cryptocurrency is a big issue, and as seen above, states are treating cryptocurrency, its division in a divorce, and the concealment thereof as a regular asset rather than its own phenomenon.²⁷¹

Scholars throughout the United States have continuously proposed ideas for how cryptocurrency in general should be treated going forward.²⁷² In Texas, parties are

²⁶² See *LaFond v. LaFond*, No. 82486-COA, 2022 WL 714430 (Nev. Ct. App. Mar. 09, 2022).

²⁶³ See generally *id.*

²⁶⁴ *Id.* at *3.

²⁶⁵ *Id.* at *1.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at *2.

²⁶⁸ *Id.*

²⁶⁹ Karlyn Henry, *A Guide to Cryptocurrency and Divorce*, SURVIVE DIVORCE (June 23, 2022), <https://www.survivedivorce.com/cryptocurrency-divorce>.

²⁷⁰ *Id.*

²⁷¹ *LaFond*, 2022 WL 714430 at *1.

²⁷² See, e.g., Stephanie L. Tang, *Cryptocurrency, NFTs, and the "Metaverse": Addressing the Expanding World of Virtual Assets in Divorce Proceedings*, 127 PENN ST. L. REV. 1 (Fall 2022).

urged to include cryptocurrency on inventory and appraisal forms, and all other documents related to the currency production.²⁷³ Once the cryptocurrencies are identified, Texas Community Property law applies.²⁷⁴ Then, the parties are required to show when the assets have been acquired; if acquired prior to the marriage, then the cryptocurrency should be considered separate property.²⁷⁵ On the other hand, if accumulated during the marriage, then community property law applies.²⁷⁶ Texas requires cryptocurrencies to be transferred on exchange or cashed out as a way to divide it or award it to divorcing spouses.²⁷⁷

Similarly, Illinois treats cryptocurrency like any other asset and income.²⁷⁸ If there are any benefits coming from the investment of the cryptocurrency, then it can be imputed as income, and thus can be used to calculate child support obligations.²⁷⁹ Like any investment made during a marriage, an investor's spouse may also have an interest in the cryptocurrency investment, especially upon divorce.²⁸⁰

Section 3:64 of the Louisiana Civil Law Treatise, Matrimonial Regimes, speaks directly to how cryptocurrency should be treated in a divorce.²⁸¹ The treatise says "[i]f acquired during the legal regime, it is presumptively community property. Arguably, the effort and skill required to set-up a 'mining' operation is sufficient to meet the Article 2338 'effort, skill, and industry' requirement."²⁸² Louisiana seems to adopt the approach that if acquired during the marriage, the cryptocurrency should be split amongst divorcing spouses equally, unless it can be found that the spouse did not assist in actively appreciating the value of the cryptocurrency.²⁸³

It is important to note that the majority of the states that have passed legislation or implemented policies regarding cryptocurrency and divorce are community property

²⁷³ Chris Meuse, *Chapter 28. Bitcoin, Blockchain, and Cryptocurrency: How it Works. V. Cryptocurrency and Divorce*, TXCLE ADVANCED FAM. L. 28-V (2018).

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Crypto Currency: It's Impact on Child Support and Maintenance*, KISWANI L. (May 13, 2019), <https://kiswanilawfirm.com/crypto-currency-its-impact-on-child-support-and-maintenance/>.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ 16 ANDREA CARROLL & RICHARD MORENO, LA. CIV. L. TREATISE, MATRIMONIAL REGIMES § 3:64 (5th ed. 2023).

²⁸² *Id.*

²⁸³ Betsy Fisher, *I Think My Spouse Has Cryptocurrency – Will That Get Divided During a Divorce?*, BETSY A. FISHER, LLC (Dec. 22, 2021), <https://www.louisianafamilyandelderlaw.com/i-think-my-spouse-has-cryptocurrency-will-that-get-divided-during-a-divorce/>.

states.²⁸⁴ Thus, as we will address later, Ohio may have a different approach as it is a separate property state.²⁸⁵ Nevertheless, it is clear that states across the United States have had a similar idea on how to deal with cryptocurrency upon divorce.²⁸⁶ However, the United States is not the only country to have been dealing with this phenomenon.²⁸⁷

B. *The Law Outside of the United States*

In the United Kingdom, divorcing spouses are required to make full and frank disclosure of all their assets, including cryptocurrencies.²⁸⁸ Courts in the United Kingdom can order for sale or transfer of the cryptocurrency holdings upon a divorce.²⁸⁹ Similarly to the law on division of property in Ohio, United Kingdom law provides that if a spouse owns cryptocurrency before they entered into the marriage, and let it passively appreciate over the marriage (i.e., not actively investing or working for it to increase), the court may not award the divorcing spouse any of the cryptocurrency, because it is the first spouse's separate property.²⁹⁰ On the other hand, if the spouse is actively investing in the cryptocurrency and consulting the other spouse throughout the investments, the court may award the divorcing spouse an equitable division of the cryptocurrency assets because it would be considered, what we call in Ohio, marital property.²⁹¹

²⁸⁴ See, e.g., Lamy, *supra* note 241 (discussing cryptocurrency legislation in Colorado, a community property state); *In re Marriage of DeSouza*, 266 Cal.Rptr.3d 890 (Cal. Ct. App 2020) (discussing cryptocurrency legislation in California, a community property state); *Matter of Marriage of Liu and Chang*, 16 Wash. App. 2d 1059 (Wash. Ct. App. 2021) (WestLaw) (discussing cryptocurrency legislation in Washington, a community property state); *LaFond v. LaFond*, No. 82486-COA, 2022 WL 714430 (Nev. Ct. App. Mar. 9, 2022) (discussing cryptocurrency legislation in Nevada, a community property state).

²⁸⁵ Tony Comunale, *Cryptocurrency & Divorce in Ohio*, COMUNALE L. OFF. (Sept. 24, 2022), <https://www.comunalelaw.com/cryptocurrency-divorce-in-ohio/>.

²⁸⁶ Henry, *supra* note 269.

²⁸⁷ See, e.g., *FAQs – Cryptocurrency in Divorce*, VWV (Feb. 28, 2022), <https://www.vwv.co.uk/news-and-events/blog/divorce-family-law/faqs-cryptocurrency-in-divorce>.

²⁸⁸ Harriet Errington, *Divorcing with Cryptocurrency*, BOODLE HATFIELD (June 4, 2021), <https://www.boodlehatfield.com/articles/divorcing-with-cryptocurrency/>; see also Harriet Errington, *Divorcing With Cryptocurrency*, MONDAQ (Nov. 11, 2021), <https://www.mondaq.com/uk/divorce/1130440/divorcing-with-cryptocurrency> [hereinafter Errington UK].

²⁸⁹ Errington, *supra* note 288.

²⁹⁰ Ed Magnus, *Should I get a share of my husband's crypto assets in our divorce? They weren't included in our prenup but have now boomed in value*, THIS IS MONEY (Oct. 22, 2021), <https://www.thisismoney.co.uk/money/experts/article-10107343/Am-entitled-share-ex-husbands-cryptocurrency-divorce.html>.

²⁹¹ *Id.*

Canada has a similar approach to the issue of cryptocurrency and divorce as the United States and United Kingdom. Canadian divorce law requires that all debts and assets, personal or joint-owned, must be accounted for and potentially equalized.²⁹² If divorcing spouses fail to disclose their cryptocurrency, divorce lawyers should examine the opposing side's bank records for any payments to the cryptocurrency exchanges.²⁹³ For the issue of concealing crypto-assets in divorce proceedings to be properly addressed, family lawyers in Canada are encouraged to educate themselves in the growing world of cryptocurrency.²⁹⁴ Once the courts believe that a party is dishonest about what they own, they can order full investigations and it could be counted against the concealing party when determining the division of marital property.²⁹⁵ Again, much of the Northern Hemisphere is actively approaching the world of cryptocurrency and is trying to tackle the issue of concealing assets in a divorce as quickly as it can; however, with how rapidly cryptocurrency is growing in today's world, it might not be enough.²⁹⁶ That brings us to our next point, addressing what action Ohio should take to stay up to speed with the rapidly growing world of cryptocurrency.

V. WHAT THE LAW SHOULD BE IN OHIO GOING FORWARD

Ohio is no stranger to passing legislation or making the public aware of what is going on in the developing world of cryptocurrency.²⁹⁷ In 2021, the Ohio State Senate introduced Senate Bill 222, which sought to provide stronger legal support for blockchain-based businesses.²⁹⁸ Its goal was to update existing Ohio law regarding electronic transactions, and also aimed to include blockchain-based transactions.²⁹⁹ Additionally, the recently passed Ohio House Bill 177 now allows the state to use blockchain or distributed ledger technology for governmental purposes.³⁰⁰ The Ohio

²⁹² Ken Maynard, *Cryptocurrency Assets in Divorce Financial Settlements*, DIVORCE THE SMART WAY, <https://divorcethesmartway.ca/property-division/cryptocurrency-and-divorce/> (last visited, Jan. 8, 2023).

²⁹³ Jonah Paritzky, *Preparing your Practice for the Crypto Revolution: What Every Family Lawyer Should Know*, SCHULMAN & PARTNERS LLP (Mar. 7, 2018), <https://shulman.ca/complex-asset-division/preparing-your-practices-for-the-cryptocurrency-revolution-what-every-family-lawyer-needs-to-know/>.

²⁹⁴ *Id.*

²⁹⁵ Errington, *supra* note 288.

²⁹⁶ Comunale, *supra* note 285.

²⁹⁷ See, e.g., Andrew J. Tobias, *Ohio Legislature Passes Bill to Support Blockchain*, GOV'T TECH., <https://www.govtech.com/policy/ohio-legislature-passes-bill-to-support-blockchain.html> (last visited Jan. 8, 2023).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ Kim Palmer, *Ohio Senate passes blockchain and interstate licensing bills*, CRAIN'S CLEV. (Nov. 12, 2021), <https://www.crainscleveland.com/kim-palmer-blog/ohio-senate-passes-blockchain-and-interstate-licensing-bills>.

Elections Commission has begun to allow for candidates and elected officials to accept campaign donations in Bitcoin and via Venmo.³⁰¹ Ohio Revised Code enacted Section 9.61(b) which provides “[a] governmental entity may utilize distributed ledger technology, including blockchain technology, in the exercise of its authority.”³⁰² Thus, campaigns can now collect Bitcoin as donations, however, they must be treated as “in-kind contributions” for the reason that cryptocurrency is not considered to be traditional money.³⁰³

Since the Ohio Legislature has already begun to venture in the world of cryptocurrency, why has the state not proposed any legislation regarding how cryptocurrency should be treated in divorces? This Note propose that Ohio should add the term “cryptocurrency” to relevant Ohio Revised Code sections, especially sections 3105.171, 3105.18, and 3119.01.³⁰⁴ This Note would suggest, like some other states have, that Bitcoin and other cryptocurrencies be treated as regular assets in divorce proceedings, subject to Section 3105.171 of the Ohio Revised Code, to analyze division of assets.³⁰⁵ If a spouse invested in Bitcoin before the marriage, and was subject to passive appreciation, it should be considered the separate property of the investing spouse, and thus, not divisible upon divorce.³⁰⁶ Conversely, if a spouse invested in Bitcoin during the marriage, and actively traded so that the value would increase, this should be considered marital property under Section 3105.171 and thus, should be divisible.³⁰⁷

In addition to how Bitcoin and other cryptocurrencies should be treated with respect to the division of property, the state should also consider how they would treat these assets with regard to spousal support awards. As we have seen in the examples above, awards of spousal support are based on many factors, including the income of all the parties.³⁰⁸ Most states, however, do not consider Bitcoin and cryptocurrency investments as income. Rather, several states have considered them to be assets, such as a house or car.³⁰⁹ Awards for spousal support could also be based on the relative

³⁰¹ Haley BeMiller, *Ohio Elections Commission delays decision on rules for Bitcoin, Venmo campaign donations*, COLUMBUS DISPATCH (Dec. 2, 2021), <https://www.dispatch.com/story/news/2021/12/02/ohio-elections-commission-changes-rules-venmo-bitcoin/8825885002/>.

³⁰² OHIO REV. CODE ANN. § 9.16(b).

³⁰³ In-kind contributions are anything of value that is not cash. BeMiller, *supra* note 301.

³⁰⁴ *See generally* OHIO REV. CODE ANN. §§ 3105.171, 3105.18, and 3119.01.

³⁰⁵ *Id.*

³⁰⁶ *See generally Family Spousal Support*, OHIO LEGAL HELP, <https://www.maritalaws.com/states/ohio/property-division> (last visited Jan. 8, 2023).

³⁰⁷ *Id.*

³⁰⁸ OHIO REV. CODE ANN. § 3105.18.

³⁰⁹ *A Guide to Divorce and Cryptocurrency*, MASTERS LAW GROUP LLC (July 22, 2022), <https://www.masters-lawgroup.com/cryptocurrency-and-divorce/a-guide-to-divorce-and-cryptocurrency/>.

assets and liabilities of the parties.³¹⁰ This means that upon a court order, the assets can be sold and awarded to spouses who are entitled to spousal support.³¹¹

Since Bitcoin is so easily concealable, this Note proposes some form of legislation that takes into consideration not only the earning abilities of each spouse, but investment abilities. Those who are knowledgeable in the world of cryptocurrency arguably have a greater earning ability. And with the rapid growth of this market, who is to say that this will not be the world's number one money maker in the next few years? Legislation in this area could assist in protecting spouses' assets from each other, especially in areas where they have different strengths and weaknesses.

For similar reasons, this Note also proposes that the Ohio Legislature include cryptocurrency in legislation and consider it a form of income when determining child support awards. Currently, the Ohio Revised Code Section 3119.01 does not mention cryptocurrency as a factor of income, or a factor to be considered when imputing income.³¹² Ohio should adopt the Illinois approach to cryptocurrency, which allows for any benefit that comes from a cryptocurrency investment to be imputed as income for child support purposes.³¹³ Ohio Revised Code Section 3119.01(17)(a)(vi) provides that the special skills and training of the parents be a factor when determining imputed income with respect to child support.³¹⁴ This Note argues that mining cryptocurrency could be considered a special skill, and therefore it should be considered imputed income. Again, those who have mastered the art of investing in cryptocurrencies arguably have skills and training that may put them at an advantage of making a higher income than their ex-spouses. In a way, mining and investing in cryptocurrency can be seen as a job, as it requires a special skill set that most people do not have. If we can consider it to be a job, then logically it would follow that any gains from mining should be seen as income. Thus, until cryptocurrency is added to relevant Ohio legislation, courts should consider it to be a form of income for both spousal and child support purposes.

Ohio and other state legislatures must act quickly on proposing legislation or adding to legislation that deals with the current gaps in family law regarding cryptocurrency. Until then, attorneys in this field and domestic relations courts should be encouraged to look into cryptocurrency, and further educate themselves on its easily concealable nature and its impact on clients.³¹⁵ Additionally, they should do their due diligence in making sure that their clients are getting one hundred percent of

³¹⁰ OHIO REV. CODE ANN. § 3105.18.

³¹¹ *Id.* § 3105.171.

³¹² *See generally id.* § 3119.01.

³¹³ *See generally* KISWANI L., *supra* note 278.

³¹⁴ OHIO REV. CODE ANN. § 3119.01(17)(a)(vi).

³¹⁵ *See generally* Kelly L. Burris, *Cryptocurrency: What to Know Before and During Divorce*, *DIVORCE MAG* (Mar. 12, 2021), <https://www.divorcemag.com/articles/cryptocurrency-what-to-know-before-and-during-divorce>.

what they are owed—including any possible hidden assets.³¹⁶ With more people investing in cryptocurrency each day, divorce lawyers should be aware that their clients, and/or their client's soon-to-be ex-spouses have a very high chance of being Bitcoin owners.³¹⁷ And with that, the legal profession and the state legislatures should work together and act quickly before we fall too behind in this rapidly changing world.

VI. CONCLUSION

This Note addressed what cryptocurrency is, the current divorce law in Ohio, the law in other U.S. jurisdictions and outside of the United States regarding divorces and cryptocurrency and proposed what the law should be regarding cryptocurrency and divorce in Ohio. With the dramatic rise of investments in cryptocurrency, it is safe to say that the phenomenon is growing and will continue to grow. Cryptocurrency allows for people to trade amongst each other without government interference.³¹⁸ This being said, it also allows for people to conceal what they own in the form of cryptocurrency.³¹⁹ Many states have treated cryptocurrency as standard assets in divorce proceedings, dividing it subject to whether it is found to be separate property or marital property.³²⁰ Countries like Canada and the United Kingdom have also treated cryptocurrency as a standard asset in divorce proceedings.³²¹ With the continuing growth of the cryptocurrency market, the Ohio State Legislature must consider legislation on how it will treat the growing issue moving forward.

³¹⁶ See Lamy, *supra* note 241.

³¹⁷ Kate Dore, *Spouses in divorce proceedings are using cryptocurrency to hide money. Here's how experts find it*, CNBC (June 1, 2021), <https://www.cnbc.com/2021/06/01/divorcing-spouses-are-using-cryptocurrency-to-hide-money-how-experts-find-it.html>.

³¹⁸ See James McWhinney, *Why Governments are Wary of Bitcoin*, INVESTOPEDIA, <https://www.investopedia.com/articles/forex/042015/why-governments-are-afraid-bitcoin.asp> (last visited Jan. 8, 2023).

³¹⁹ *Can Cryptocurrency Be Used to Hide Assets During Divorce*, LAWRENCE L. (Nov. 17, 2021), <https://lawlawfirm.com/can-cryptocurrency-be-used-to-hide-assets-during-divorce/>.

³²⁰ Maynard, *supra* note 292; Zoe Worthington, *Consideration of crypto-assets during divorce*, JMW (Apr. 21, 2022), <https://www.jmw.co.uk/services-for-you/family-law/blog/consideration-crypto-assets-during-divorce>.

³²¹ See generally Maynard, *supra* note 292; Errington, *supra* note 288.