

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000458-MR

MICHAEL N. BALDRIDGE

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE KELLEY ASBURY, JUDGE
ACTION NO. 97-CI-00554

JILL LAVERNE BALDRIDGE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from those portions of a decree of dissolution which awarded appellee maintenance and found appellant to be in arrears in the payment of temporary maintenance. Upon reviewing appellant's arguments in light of the record herein and the applicable law, we affirm.

Appellant, Michael Baldridge, and appellee, Jill Baldridge, were married in 1985. Two children were born of the marriage, Tyler, who was eleven years old at the time of the decree, and Christina, who was five years of age at the time. Michael filed a petition for dissolution on June 5, 1997. At the

time of the decree, Michael was 42 years of age and earned approximately \$45,000 a year. Jill was 30 years old and had not been employed for almost eight years. During that time, she stayed home to raise the parties' children. Jill has no education beyond high school. Prior to staying home with her children, Jill worked as a surgical assistant to an oral surgeon, earning between \$10.00 and \$12.00 an hour.

In the report of the domestic relations commissioner, which was subsequently adopted by the court, the commissioner recommended joint custody with Jill being awarded physical custody of Christina and Michael being awarded physical custody of Tyler. The commissioner found that Michael earned \$3,719.11 per month and, although she was unemployed, imputed \$892.67 per month (minimum wage) in income to Jill for purposes of determining child support. Based on these figures, the commissioner recommended that Michael pay Jill \$355.34 per month in child support (the difference in what Jill would have to pay Michael for one child and what Michael would have to pay Jill for one child). In addition, the commissioner recommended that Jill be awarded \$500 per month in maintenance for four years. Finally, the commissioner found that Michael was \$2,400 in arrears on his \$600 per month temporary maintenance obligation. Michael thereafter filed exceptions to the commissioner's report, objecting to the amount and duration of maintenance as well as the amount of maintenance arrearage. After a hearing on the exceptions, the court entered its order adopting the

recommendations of the commissioner and overruling Michael's exceptions on January 26, 1998. This appeal by Michael followed.

Michael first argues that the court's award of maintenance to Jill was an abuse of discretion. Michael contends that Jill is able to support herself through appropriate employment, as evidenced by her previous job as a surgical assistant. Thus, under KRS 403.200(1), she is not entitled to maintenance. Jill counters that her experience as a surgical assistant was years ago in Lexington (she now resides in Boyd County). She claims that because she has no specialized training and has been out of the work force for so long, she needs time to obtain training or education so that she can get a job which pays more than minimum wage. She further claims that their daughter was having a difficult time with the divorce and she wanted to wait until the child began first grade before returning to school.

The determination of whether maintenance should be awarded and the amount thereof are matters within the sound discretion of the trial court. Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977). We cannot say the trial court abused its discretion in finding that Jill was entitled to maintenance in this case. Although she had been employed in the past as a surgical assistant, that was some time ago in a different city. She has been home with her children and out of the work force for eight years. While the court did impute minimum wage income to Jill for purposes of child support, we believe that, under the circumstances, Jill should be given the opportunity for a

reasonable amount of time to better herself through education or training in order to obtain more than minimum wage employment. See Moss v. Moss, Ky. App., 639 S.W.2d 370 (1982). We believe it would be difficult for Jill to provide for her and her child's reasonable needs with a minimum wage job.

Michael next complains that, given his monthly expenses, he cannot afford to pay Jill \$500 a month in maintenance. According to Michael, the court failed to take into account his ability to meet his own needs while at the same time meeting the needs of the spouse seeking maintenance, as required by KRS 403.200(2)(f). In reviewing the commissioner's recommendations, we see that the commissioner specifically took into account Michael's expenses of \$1,761.54 a month. Michael contends that the commissioner should have also considered expenses such as a \$500 a month furniture payment, a \$160 per month loan payment, and a \$456 per month car payment. As to the \$9,000 furniture debt, the commissioner found that Michael "was under no written obligation to pay this amount." As to the car payment, the commissioner found that Michael incurred this debt after the separation. Jill maintains that these debts were fabricated, overstated or were recently incurred for the sole purpose of increasing his expenses so as to avoid maintenance. In our view, the court considered Michael's reasonable expenses and, thus, did consider Michael's ability to meet his own needs pursuant to KRS 403.200(2)(f). We would further note that the sheer fact that a spouse is heavily indebted does not necessarily

absolve him from the duty to pay maintenance. Carter v. Carter, Ky. App., 656 S.W.2d 257 (1983).

Considering the other factors in KRS 403.200(2), we cannot say that \$500 a month maintenance for four years was an abuse of discretion. The parties were married for twelve years and enjoyed a comfortable middle class standard of living. KRS 403.200(2)(c) and (d). With regard to the financial resources of Jill (KRS 403.200(2)(a)), she is presently unemployed and received no income generating property in the divorce. As stated earlier, she will need some amount of time for the education or training she needs to become integrated back into the workplace. KRS 403.200(2)(b). Four years seems to us to be a reasonable amount of time therefor, given her age and the fact that she is in good health. KRS 403.200(2)(e).

Michael's final argument is that the trial court abused its discretion when it found him to be \$2,400 in arrears on his temporary maintenance. The crux of Michael's argument is that the court should not have ordered him to pay temporary maintenance for the month of August 1997 because the temporary maintenance order was not to be retroactive and was not to commence until "the date of the court's order," according to the report of the domestic relations commissioner of July 23, 1997. Michael contends that the order in question was the order entered on September 17, 1997. Conversely, Jill maintains that the intended order was the order of August 29, 1997. In reviewing the record, we agree with Jill that order on which the temporary maintenance was to begin was the order of August 29, 1997. The

September order makes no mention of the temporary maintenance obligation or any arrearages. The August order states that Michael "shall catch up on any back payments due under said Report [the July 23, 1997 report of the domestic relations commissioner]."

For the reasons stated above, the judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Charles D. Oppenheimer
Ashland, Kentucky

BRIEF FOR APPELLEE:

Bruce W. MacDonald
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