

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002766-MR

MICHAEL J. BARTLETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOAN BYER, JUDGE
ACTION NO. 96-FC-01743

CYNTHIA H. BARTLETT

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, MILLER AND SCHRODER, JUDGES.

EMBERTON, JUDGE: The sole issue in this appeal is whether appellant, Michael J. Bartlett, was denied due process of law when the trial court entered an order finding his income to be greater than the amount found in the report of the domestic relations commissioner. We affirm.

In November 1997, appellee filed a motion to increase child support in part because of a reduction in the amount of maintenance she had been receiving. The domestic relations commissioner conducted a hearing and issued findings which paint the following picture of appellant's lifestyle and resources:

Respondent testified that he is the sole owner of M. Joseph and Associates. He

resides in Lake Forest in a home which for purposes of a credit application produced in July 1997, was valued at \$540,000.00, with a mortgage balance of \$395,000.00. At the time of the credit application he listed his monthly gross income of \$8,000.00, plus "other income" of \$40,000.00 annually. M. Joseph and Associates pays his monthly mortgage payment in the amount of \$2,900.00 on the Lake Forest home as well as the utility bills at the home; also Respondent's meals and entertainment. The company has purchased for Respondent a membership at Lake Forest Country Club for the sum of \$9,500.00, and pays \$175.00 in monthly dues. The company also pays the Respondent's monthly expenses at the Country Club which were recently running in the neighborhood of \$700.00 and \$800.00 monthly. Respondent testified that Nancy Schilling, his girlfriend who lives with him in the Lake Forest home, pays to him the sum of \$1,500.00 monthly in rent and pays the telephone bill at the house. In the past the company has purchased an \$11,000.00 baby grand piano for the house, as well as an oriental rug of the value of \$8,825.00; a clock of the value of \$2,500.00; and approximately \$25,000.00 worth of household furnishings. Respondent states that his own monthly living expenses, over and above what the company pays on his behalf, are approximately \$1,000.00 monthly. He has no personal debts.

The commissioner also noted appellant's claim that his income from his company's earnings has been drastically reduced because of the violation of a non-compete clause by a former employee to the point that he is currently earning about one-half of what he had previously been accustomed to earning. On the basis of appellant's testimony and that of his accountant's, the commissioner recommended a finding that his monthly income had been reduced by fifty percent from the \$8,000 listed in the 1997 credit report and was therefore currently only \$4,000 per month. The commissioner added to that figure \$1,750 per month (again a 50% reduction from appellant's 1997 income), by reason of the expenses paid on behalf of his company of which he is sole owner. Thus, for purposes of calculating child support for the parties' four children, the commissioner recommended an income figure of \$5,750.

In ruling on appellee's exception to the recommended finding as to appellant's monthly income, the trial court made the following finding:

1. The Domestic Relations Commissioner erred in calculating Respondent's monthly income to be \$4,000 per month. The Court having reviewed the Exhibits finds that the Respondent's reasonable yearly income to be at least \$136,000 per year. This is consistent with Respondent's own information for purposes of obtaining credit. It is further consistent with Respondent's lifestyle and monthly expenses as set out in the exhibits to the Commissioner's Report and contained within the Court's file.

Appellant argues in this appeal that the trial court abused its discretion in ruling upon the exceptions to the commissioner's report without reviewing all of the evidence presented in the case and, that in so doing, deprived him of his right to procedural due process. We disagree.

The trial court's authority with respect to utilization of the report of the domestic relations commissioner is plainly set out in Kentucky Rules of Civil Procedure (CR) 53.06(2):

The court after hearing may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions.

The Kentucky Supreme Court in Eiland v. Ferrell,¹ interpreted the language of the rule as affording trial courts "the broadest possible discretion with respect to the use it makes of reports of domestic relations commissioners."

¹ Ky., 937 S.W.2d 713, 716 (1997).

Furthermore, in Haley v. Haley,² this court explained that the "hearing" envisioned by CR 53.06(2), is merely an opportunity for each party to present his or her position with respect to the report by oral argument and that a full-blown evidentiary hearing is not within the contemplation of the rule.

We are convinced that appellant was afforded his right to be heard and that the decision of the trial court did not deprive him of the due process guarantee. It is clear to us that the trial court had a clear picture of the evidence as a whole in passing on the exceptions to the commissioner's report and that the decision in no way constitutes an abuse of discretion. A trial court is not required to comment upon every conceivable piece of evidence in the case; it is sufficient that evidence of substance supports its decision. Our review of the record in this case confirms the existence of substantial evidence supporting the trial court's conclusion with respect to appellant's income. In fact, we find ourselves in agreement with its assessment based upon the evidence as a whole.

The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David A. Black
Louisville, Kentucky

BRIEF FOR APPELLEE:

J. Michael Smither
Louisville, Kentucky

² Ky. App., 573 S.W.2d 354 (1978).