

RENDERED: January 21, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001320-MR

GEORGE JOSHUA CRANCE

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 02-CI-00936

BETTY ANN CRANCE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; MINTON, JUDGE; MILLER, SENIOR
JUDGE.¹

MILLER, SENIOR JUDGE: Appellant George Joshua Crance (George)
brings this appeal from the Boyd Circuit Court of a decree of
dissolution of marriage entered June 2, 2003, and an order
overruling his exceptions to and adopting the April 9, 2003,
Report of the Domestic Relations Commissioner (DRC) entered
April 23, 2003.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and
Kentucky Revised Statutes 21.580.

Before us George argues that the trial court erred in awarding maintenance of \$618.00 per month to appellee Betty Ann Crance (Betty) by failing to consider both his ability to pay and the sufficiency of Betty's property, and further erred in the division of property by failing to consider the value of the property set apart to each spouse.

We review questions of fact under the clearly erroneous standard of Kentucky Rule of Civil Procedure (CR) 52.01 and questions of law *de novo*. As we conclude that the findings of the circuit court are supported by substantial evidence and are not an abuse of discretion, we affirm the circuit court.

Betty was born May 18, 1951, and George was born August 7, 1945. The parties married on April 13, 1974, and had two children who were both emancipated at the time of the proceedings.

At the hearing before the DRC on November 20, 2002, evidence was presented as follows. George was a long time employee of American Electric Power (AEP) who had retired due to a disability. He was earning \$1,074.00 per month from Social Security and \$600.00 per month in long-term disability from AEP for a total monthly income of \$1674.00. His expenses were \$1656.00 per month, and his medical insurance was paid through his employer. Evidence was also presented that Betty was

disabled, earning \$438.00 per month. Betty's expenses were \$1,513.87 per month at the time of the hearing, anticipated to be reduced to \$1,479.20 after the dissolution. Betty was covered by Medicare.

The parties accumulated marital property including the marital residence, valued at \$52,000.00; George's retirement benefits through AEP, valued at \$27,906.40; George's 401(k) plan, valued at \$4,000.00; a baseball card collection, valued by George at \$500.00 and by Betty at between \$65,000.00 and \$80,000.00; a 1998 Honda Civic valued at \$8,000.00 with no lien; a 1998 Toyota Camry valued at \$13,500.00 with a lien of \$8,995.88; a 2002 Nissan with a lien in excess of \$10,000.00; a life insurance policy with some cash value, unvalued at the time of the dissolution; and marital debts of \$133.00 on a discover card and \$428.84 in back utilities.

Betty also claimed non-marital property including, by way of inheritance, living room furniture, a chest of drawers, a hope chest, two odd tables, living room sofa, chair, sofa table and entertainment center; and a hope chest that was a gift.

Based on the evidence, the DRC recommended that the marital residence and the baseball card collection be sold and the proceeds divided equally (approximating equal portions of \$26,000.00 for the house and between \$250.00 and \$32,500.00 for the baseball cards); that Betty receive the non-marital property

listed plus the dinette set, the bedroom furniture, her daughter's bed, the Christmas collection and the dryer; that the parties equally divide 1) George's retirement (equal division approximates to \$13,953.20 for AEP and \$2,000.00 for the 401(k)), 2) the cash value of the life insurance policy, and 3) the past utility bills of \$428.84; that George return Betty's jewelry; that George receive the 2002 Nissan and all debts thereon (which George testified had a lien in excess of \$10,000.00); that Betty receive the 1998 Camry and all debts thereon (value of \$13,500.00 and a lien of \$8,995.88); that the daughter receive the 1998 Honda; and that George pay the discover card debt (\$133.00). Based on information from an attorney with Home Federal Savings and Loan Association, the DRC concluded that proceeds from Betty's automobile accident recovery were held in trust for the parties' adult daughter and therefore were not considered in the computation of maintenance or division of the marital estate. Each party was responsible for his or her attorney fees and George was responsible additionally for the DRC fee and the court reporter's fee.

The DRC further found that Betty did not have enough property awarded to her and was thus unable to adequately maintain herself through her income. Based on the parties' monthly income (George: \$1,674.00; Betty: \$438.00) and monthly expenses (George: \$1,656.00; Betty: \$1,513.87 at the time of

the hearing, anticipated to be reduced to \$1,479.20 after the dissolution), the DRC recommended that, in order to equalize the income of the parties, that George pay Betty maintenance of \$618.00 per month until further orders of the Court.

George filed objections to the DRC report, claiming that the award of \$618.00 per month in maintenance was excessive in light of Kentucky Revised Statutes (KRS) 403.200(2)(f), and that the DRC's attempt to equalize the parties' income left George with a monthly shortage of \$756.00 and Betty with a monthly shortage of \$429.00. Additionally George argued that the DRC incorrectly categorized the proceeds in Home Federal as an irrevocable trust and argued that the proceeds should have been considered Betty's non-marital property. George also objected to the characterization of the entertainment center as non-marital property, and objected to the sale and division of the baseball card collection instead of awarding it to the parties' son.

On April 23, 2003, the circuit court overruled George's objections and adopted the DRC report of April 9, 2003. Thereafter, on June 2, 2003, the decree of dissolution was entered. This appeal followed.

George first argues that in awarding maintenance to Betty the circuit court failed to consider KRS 403.200(2)(f), which states that any "maintenance order shall be in such

amounts . . . as the court deems just, and after considering all relevant factors including . . . [t]he ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance." We disagree.

The amount of maintenance is within the sound discretion of the circuit court. Gentry v. Gentry, 798 S.W.2d 928, 937 (Ky. 1990). KRS 403.200 sets forth the findings required to be made by the court in awarding maintenance. In Perrine v. Christine, 833 S.W.2d 825, 826 (Ky. 1992), the Supreme Court stated:

Under this statute, the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts. In order to reverse the trial court's decision, a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion.

As stated in Russell v. Russell, 878 S.W.2d 24, 26 (Ky.App. 1994):

It is appropriate to award maintenance when a party is not able to support themselves in accord with the same standard of living which they enjoyed during marriage and the property awarded to them is not sufficient to provide for their reasonable needs. Robbins v. Robbins, Ky.App., 849 S.W.2d 571, 572 (1993); and Atwood v. Atwood, Ky.App., 643 S.W.2d 263, 265-66 (1982). Furthermore, where a former spouse is not able to produce enough income to meet their reasonable needs, it is appropriate to award

maintenance. Id. and Calloway v. Calloway,
Ky.App., 832 S.W.2d 890, 894 (1992).

The circuit court considered both George and Betty's income and expenses. The court concluded that both George and Betty are disabled and that both sets of expenses are similar, including vehicle debt. The circuit court also concluded that the award of maintenance of \$618.00 per month to Betty served to equalize the income of the parties when added to Betty's disability income of \$438.00 monthly. Additionally, in the division of marital property, both received one-half of the proceeds from the sale of the marital residence, which approximates to \$26,000.00 each; one-half of George's AEP retirement and 401(k) which approximates to \$15,953.20 each; one-half of the cash value of the life insurance policy which was unvalued at the hearing; and one-half of the proceeds from the sale of the baseball cards which approximates to either \$250.00 or \$32,500.00 each depending on which value, George's or Betty's, is believed.

In Garrett v. Garrett, 766 S.W.2d 634 (Ky.App. 1989), the circuit court failed to consider KRS 403.200(2)(f) when it imposed maintenance obligations. The instant case is clearly distinguishable. Herein, the financial condition of both parties was particularly considered by the circuit court which made a specific finding to equalize the income of the parties.

Under the circumstances, we conclude that the circuit court's findings of fact are not clearly erroneous, and its award of maintenance to Betty in the amount of \$618.00 per month is not an abuse of discretion.

George also argues that the award of maintenance was further erroneous because the circuit court failed to consider Betty's marital and non-marital property in finding that Betty lacked sufficient property to provide for her reasonable needs. KRS 403.200(1) requires the court to make a finding before awarding maintenance that the spouse seeking maintenance lacks sufficient marital and non-marital property to provide for his or her reasonable needs.

Again, we disagree with George's contentions. Betty's division of marital property amounted mainly to one-half of the marital residence, one-half of George's retirement, and one-half of the value of a life insurance policy. Both received vehicles with similar debt. Betty received non-marital property consisting of household items. George's allegations of Betty having access to sufficient property to support her reasonable needs by way of proceeds from inheritance and an automobile accident settlement are not supported by the record. The circuit court's findings that these funds are not marital property are clearly supported by the evidence. There was no abuse of discretion in the award of maintenance.

George lastly argues that the circuit court erred in its division of marital property. George asserts that the circuit court failed to consider as marital property his testimony that Betty withdrew \$17,000.00 from joint savings, gave it to the parties' son who then returned the money to Betty. Again we disagree. Both parties made allegations of similar amounts of dissipation of funds and both parties disagreed with the allegations of the other. Pursuant to CR 52.01, due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The circuit court's distribution of the marital estate was equitable and supported by the evidence. We conclude that there was no abuse of discretion.

For the foregoing reasons, the decree and order of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jill Hall Rose
Julie H. Gragg
Lexington, Kentucky

BRIEF FOR APPELLEE:

Jeffrey L. Preston
Catlettsburg, Kentucky