

RENDERED: JANUARY 29, 2010: 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001650-MR

VICKIE LOUISE WHEELER

APPELLANT

APPEAL FROM JOHNSON CIRCUIT COURT, FAMILY DIVISION
v. HONORABLE JANIE MCKENZIE-WELLS, JUDGE
ACTION NO. 07-CI-00455

WILLIAM EVERETT WHEELER

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * **

BEFORE: LAMBERT AND STUMBO, JUDGES; HENRY,¹ SENIOR JUDGE.

HENRY, SENIOR JUDGE: Vickie Louise Wheeler (Wife) appeals from a judgment of the Johnson Circuit Court, Family Division, in a marital dissolution action. At issue is whether the court erred by ordering William Everett Wheeler (Husband) to pay monthly maintenance to Wife only until the time at which she

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

began receiving Supplemental Social Security Income (SSI) benefits. After our review, we conclude that the family court abused its discretion by limiting maintenance on these grounds because Wife had not begun receiving SSI benefits at the time of the court's order and the court consequently had no way of determining if those benefits would meet Wife's financial needs so as to render maintenance unnecessary. Accordingly, we vacate that portion of the family court's judgment and remand this case for further proceedings consistent with this opinion.

The parties were married on March 13, 1970, and had one child. They separated in January 2007. Husband subsequently filed a petition for dissolution of marriage on September 27, 2007, claiming that the marriage was irretrievably broken. On October 22, 2007, Wife filed a motion for maintenance and child support, along with a supporting affidavit. Wife claimed that she was unemployed and physically unable to work and therefore required maintenance to provide for her reasonable needs.² Wife filed a supplemental affidavit on November 13, 2007, in which she indicated that she had filed for SSI disability benefits but that she had not been awarded any benefits at that time. Wife's claim of disability was supported by deposition testimony given by Dr. Jeffrey Potter and has not been challenged by Husband.

On January 25, 2008, the family court entered an order awarding Wife \$300.00 per month in temporary maintenance. The court justified the award by

² The record reflects that Wife worked for approximately five years during the course of the parties' marriage.

noting that the parties had been married for a lengthy duration – 37 years – prior to separating, that Wife was disabled, and that Husband had a good income.³ The court also ordered Husband to continue paying some of Wife’s monthly bills as part of the temporary maintenance award; those bills totaled \$481.00 per month. Husband subsequently filed an affidavit indicating that the bill payments he made on behalf of Wife actually totaled \$321.00 per month because he was no longer paying Wife’s cell phone bill. However, Wife acknowledged during a later evidentiary hearing that Husband also paid \$180.00 a month for her health insurance and \$200.00 per month during the winter for kerosene to heat her home.

On July 17, 2008, the family court entered a judgment styled, “Findings of Fact, Conclusions of Law, Decree of Dissolution of Marriage, Order and Judgment” that dissolved the marriage and addressed all pending issues between the parties. The court awarded the parties’ marital home and its surrounding acreage (valued at \$12,500.00) to Wife, along with all furniture and a 1994 Chevrolet Blazer. Husband was awarded a truck, a tractor (valued at \$8,500.00), plus tools and other farm implement equipment. The parties split any remaining personal property, along with their checking and savings accounts. Wife was also awarded custody of the parties’ child, and Husband was ordered to pay child support in the amount of \$838.00 per month. Wife was assigned none of the parties’ outstanding debt.

³ According to a financial disclosure statement filed by Husband, his total gross monthly income was \$6,831.24, and his net monthly income was \$5,057.62. Husband’s 2007 tax return disclosed that his total income for that year was \$82,389.00

The court also awarded maintenance to Wife in an amount consistent with its earlier temporary order but provided that such maintenance would only “remain in effect until [Wife] receives SSI benefits.” Although it is unclear from the language of the order whether the court intended to completely eliminate maintenance payments to Wife – including payment of some of her monthly bills – once she began receiving SSI benefits, the parties appear to agree that the order has this effect. This conclusion is strengthened by the fact that on July 28, 2008, Wife filed a motion to alter, amend, or vacate the family court’s maintenance award in which she argued that the court’s decision to terminate her maintenance once she began receiving SSI benefits was “ridiculous” in light of Husband’s considerable income and her physical disabilities. The court denied the motion without addressing or clarifying the substance of the order on August 15, 2008. This appeal followed.

On appeal, Wife argues that the family court abused its discretion by eliminating her monthly maintenance award once she began receiving SSI benefits. She specifically contends that the court did not properly consider the law relating to SSI benefits in reaching this decision and that her reasonable necessities could not be met solely by those benefits. Husband argues in response that the court’s maintenance decision was appropriate because Wife was awarded the marital home and a vehicle – both free from any liens. Therefore, once she began receiving SSI benefits, she would be able to meet her needs without resort to maintenance.

KRS 403.200 governs maintenance awards. It provides as follows:

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

In order for an award of maintenance to be proper, the elements of both KRS 403.200(2)(a) and (b) must be met. *Drake v. Drake*, 721 S.W.2d 728, 730 (Ky. App. 1986). “In other words, there must first be a finding that the spouse seeking maintenance lacks sufficient property, including marital property, to provide for his reasonable needs. Secondly, that spouse must be unable to support himself through appropriate employment according to the standard of living established during the marriage.” *Id.* “The determination of questions regarding maintenance is a matter which has traditionally been delegated to the sound and broad discretion of the trial court, and an appellate court will not disturb the trial court absent an abuse of discretion.” *Bickel v. Bickel*, 95 S.W.3d 925, 927-28 (Ky. App. 2002).

With these points established, the family court’s decision immediately raises concern because the court apparently decided to terminate maintenance payments to Wife once she began receiving SSI benefits even though the record before it provided no indication whatsoever – as far as this Court can tell – as to what the amount of those benefits would be. In light of this lack of information, we fail to see how the court could properly exercise its discretion in reaching its decision.

The fact that a party is awarded SSI benefits does not, in and of itself, necessarily require that maintenance be reduced or eliminated. *See Calloway v. Calloway*, 832 S.W.2d 890, 894 (Ky. App. 1992). In *Russell v. Russell*, 878

S.W.2d 24 (Ky. App. 1994), this Court held that when a party is disabled and cannot work, and the assets she receives in a divorce – when considered in conjunction with her disability payments – are not sufficient to maintain the standard of living she enjoyed during marriage, it is appropriate to award maintenance. *Id.* at 26-27. In *Leitsch v. Leitsch*, 839 S.W.2d 287 (Ky. App. 1992), this Court similarly held that “where one is unable due to health problems to be self-supporting, [KRS 403.200] is appropriately utilized to prevent [a] ‘drastic change’ in the standard of living[.]” *Id.* at 290.

Accordingly, we believe that the amount of SSI benefits that Wife is to be paid per month is a necessary consideration in any maintenance determination in light of her disability and inability to otherwise support herself. Thus, the family court’s apparent failure here to take the amount of the SSI award into consideration in terminating Wife’s maintenance constituted an abuse of its discretion. However, because the court’s decision hinged on incomplete information, we do not believe that reversal is merited. Instead, we conclude that the portion of the court’s “Findings of Fact, Conclusions of Law, Decree of Dissolution of Marriage, Order and Judgment” relating to its maintenance determination should be vacated and this matter remanded for further consideration of the issue. In doing so, the family court should take into account the amount of Wife’s SSI benefit award along with all other factors set forth in KRS 403.200.

The judgment of the Johnson Circuit Court, Family Division, is vacated and this matter is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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