

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000697-MR

ELTON DEAN PIERCEFIELD

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 98-CI-01522

BETTY ANN PIERCEFIELD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE AND THOMPSON, JUDGES; WHITE,¹ SENIOR JUDGE.

WHITE, SENIOR JUDGE: Elton Piercefield appeals from a Kenton Family Court denial of his motion to alter, amend, or vacate its prior modification of Elton's maintenance obligation. Elton claims that the court failed to make specific

¹ Senior Judge Edwin M. White 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.

findings of fact. Concluding that Elton failed to properly preserve this issue for review, we affirm the Kenton Family Court's order.

Elton and Betty were married from 1957 until Elton petitioned for dissolution in 1998. In its March 4, 1999, order, the family court awarded Betty maintenance in the amount of \$700.00 per month. The court provided in part:

This maintenance shall continue until [Betty] reaches 65 years of age at which time her Formica Disability Income terminates and her Social Security is modified.

Upon [Betty] attaining age 65, and assuming [Betty's] social security benefit are equal to $\frac{1}{2}$ [Elton's] social benefits, [Elton] shall pay maintenance in to [Betty] in the amount of \$700.00 per month. [Elton's] obligation to pay maintenance shall continue until [Betty's] death, remarriage or cohabitation with another without marriage.

Betty moved the court to alter, amend, or vacate the decree of dissolution. The family court amended the decree by an order entered on June 9, 1999. The order provided:

Clearly [Betty] is entitled to long-term maintenance from [Elton]. And, upon a review of the record and the court's Decree, the court has a concern that it has miscalculated the income of the parties at age 65 and, consequently, may have miscalculated [Betty's] entitlement to maintenance at age 65. Therefore, the issue of [Betty's] entitlement to maintenance at age 65 should be reconsidered by the court, and to that extent the court's Decree of Dissolution should be altered or amended. However, in that the parties' income at age 65 from all sources is not precisely known, rather than establishing specific maintenance at age 65 at this time, the court will

grant leave to [Betty] to bring that matter back before the court when the parties are age 65 for a determination of appropriate maintenance at that time.

On November 6, 2008, Elton moved the family court to modify his maintenance obligation. On January 26, 2009, the court heard arguments on modification. On February 13, 2009, the family court denied Elton's motion and among other issues held that maintenance did not terminate at age 65 and that review upon request would be made by the court pursuant to the amended final decree. Eligibility under KRS 403.200 was not and is not the issue in 2009.

On February 20, 2009, Elton moved the court to alter, amend, or vacate its February 13, 2009, order. On March 27, 2009, the family court denied this motion. Elton now appeals from the court's March 27, 2009, order.

Elton claims that the family court failed to make findings of Betty's statutory eligibility for maintenance and the factors that the court considered in its decision. However, Elton failed to request more specific findings. Kentucky Rules of Civil Procedure (CR) 52.04 requires parties to move for additional findings of fact when the trial court has failed to make essential findings. Failure to move for additional findings constitutes a waiver of error. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

Although Elton did not file a petition titled as a motion for additional findings, he claims that the substance of his February 20, 2009, motion to alter, amend, or vacate concerned his request for additional findings of fact. Our review of the motion, however, does not support this claim. Instead, Elton's motion to

alter, amend, or vacate argued that the court misinterpreted the evidence. No request for additional findings of fact was made.

Accordingly, we affirm the Kenton Circuit Court's order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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