

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001551-MR

JAMES MICHAEL BROWN

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE JEFFREY M. WALSON, JUDGE
ACTION NO. 07-CI-00125

KATHERINE SCARLET BROWN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

CLAYTON, JUDGE: James Michael Brown, *pro se*, appeals an order of the Scott Circuit Court that granted an award of maintenance to Katherine Scarlet Brown.

Having determined that the trial court did not abuse its discretion, we affirm.

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.

James and Scarlet were married in Fayette County, Kentucky, on June 6, 1995. They had two sons during the marriage – Dylan, (d.o.b. 10/17/01) and Wesley (d.o.b. 1/23/03). James and Scarlet separated in February of 2007, and James filed a petition to dissolve the marriage on February 21, 2007. At the time of the petition for dissolution, James worked for Phoenix Transportation, and Scarlet was a homemaker.

The parties were divorced by an amended decree of dissolution entered on March 3, 2008. In the decree, the family court held that proper evidence had not been provided regarding the issue of maintenance and found that neither party was entitled to it. But after Scarlet filed a motion to reconsider the issue of maintenance, the family court then held that neither party had been given an adequate opportunity to present evidence on the issue and scheduled a hearing. A hearing on the issue of maintenance was held on May 1, 2008. On May 15, 2008, the family court ordered maintenance to Scarlet in the amount of \$900.00 per month for two years and \$700.00 per month for the next three years. Thereafter, James filed a motion to reconsider this order, which the judge, after holding a hearing on June 23, 2008, overruled. On August 18, 2008, James appealed from this order.

In this appeal, James maintains that the family court's decision regarding his truck payment was unreasonable and that the family court used an

inaccurate amount for his income and, therefore, he should not have to pay maintenance to Scarlet. Scarlet counters that the award of maintenance is reasonable and that she met all the statutory requirements for an award including the factor that the spouse paying maintenance is able to do so. She asserts that James is able to provide such support.

In maintenance awards the trial court is afforded a wide range of discretion, which is reviewed under an abuse of discretion standard. *See Platt v. Platt*, 728 S.W.2d 542, 543 (Ky. App. 1987). Abuse of discretion implies arbitrary or capricious action or at least an unreasonable and unfair decision. *See Kentucky Nat. Park Com'n ex rel. Com. v. Russell*, 301 Ky. 187, 191 S.W.2d 214 (Ky. 1945).

Before awarding maintenance, the family court is required to make two findings: that the party seeking maintenance lacks sufficient property, including marital assets apportioned to the party, to provide for his or her reasonable needs and that the party is unable to maintain appropriate employment. *Gentry v. Gentry*, 798 S.W.2d 928, 936-937 (Ky. 1990). In the order for maintenance, the family court commented that although Scarlet was awarded the majority of the parties' property, it did not amount to more than a vehicle and some furniture. The family court indicated that, based on her situation and the marital property involved, Scarlet did not have sufficient property to support herself. Further, regarding employment outside the home, the family court noted that Scarlet has not worked for several years and has health problems that make it difficult for her to do so. But the family court opined that Scarlet worked for a

short time during the marriage earning \$7.50 per hour. The family court opined that this type of employment is not adequate to support her. Based on this analysis, the family court determined that Scarlet met the first two statutory prongs for an award of maintenance.

Following an initial determination that maintenance is appropriate, a court next considers the relevant statutory factors to ascertain the amount and duration of an award of maintenance. These factors are the financial resources of the spouse seeking maintenance and that spouse's ability to meet his or her needs independently; the time necessary to become sufficiently educated or trained to find appropriate employment; the standard of living established during the marriage; the duration of the marriage; the age and the physical and emotional condition of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance. KRS 403.200(2)(a) - (f).

Here, the family court noted that the parties had been married for fourteen years. During the marriage, James was employed and was the sole support for the family. After the children were born, Scarlet stayed at home and cared for them. Nevertheless, the family court stated in its order that James does not now have the financial resources to support two separate households. In terms of her job skills and work history, Scarlet has a high school degree and some work experience. These qualifications allow for at least a minimum wage position. Further, Scarlet testified, and James conceded, that Scarlet had many health

problems and that these problems would limit the type of employment she could obtain.

At this time, Scarlet's only income is the \$689.00 in child support that she receives for the children. Plus, the court added that, with a minimum wage position, Scarlet could earn another \$1,000.00 a month. Imputing this income to Scarlet left her with a \$1,560.00 shortfall from her monthly expenses of \$3249.00. James also submitted his monthly expenses, which were \$2,671.00. The family court found the amount of James's expenses unreasonable since James purchased a new truck and has an expensive cell phone plan. It opined that James could save \$400.00 per month without these expenses. The family court then reduced James's expenses by \$200, the average between his budget and a \$400 reduction of his monthly expenses. In addition, James submitted pay stubs, which showed his monthly income to be \$3,353.65 per month. After deducting his monthly expenses, James is left with \$905.65 per month. Given this evidentiary information, the family court decided that Scarlet had met the statutory requisites for maintenance and that James has the ability to pay maintenance. As mentioned above, the family court ordered maintenance to Scarlet in the amount of \$900.00 per month for two years and \$700.00 per month for the next three years.

Notwithstanding James's subsequent motion to reconsider the award of maintenance based on his argument that the truck was only \$9.00 more in car payments than his marital vehicle's payments, we do not think the family court abused its discretion when ordering maintenance. The amount of James's truck

payment during the marriage is not particularly relevant to an analysis of an award of maintenance. The key issue is James's ability to pay maintenance and Scarlet's established need for maintenance. Obviously, James's income, with or without the truck payment, is sufficient to make a maintenance payment to Scarlet. Moreover, the amount of James's income was established by his pay stubs, which is a reasonable basis for the family court's inference. Furthermore, we do not find the family court's determination that Scarlet needed maintenance to be arbitrary, capricious, unreasonable or unfair.

Thus, the judgment by the Scott Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Michael Brown, *pro se*
Corinth, Kentucky

BRIEF FOR APPELLEE:

Katherine Scarlet Brown, *pro se*
Georgetown, Kentucky