

RENDERED: SEPTEMBER 30, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000635-MR

JAMES JONES, III

APPELLANT

v. APPEAL FROM WEBSTER FAMILY COURT  
HONORABLE WILLIAM E. MITCHELL, JUDGE  
ACTION NO. 06-CI-00347

LINDA JONES

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: James Jones, III appeals from the order of the Webster Family Court denying his motion to terminate a maintenance award to Linda Jones, his former wife. Concluding that there was no abuse of discretion, we affirm.

On April 15, 2008, the family court entered a divorce decree wherein Linda was awarded lifetime maintenance of \$1,000 a month. In September 2009,

contending a change of circumstances, James filed a motion to terminate his maintenance obligation to Linda due to her alleged cohabitation with another man. On January 14, 2010, the family court held a hearing regarding James's motion.

At the hearing, Linda testified that she and Mark Zachary began dating on March 27, 2009. She testified that Zachary suffered a heart attack and stroke in the spring of 2009 and moved into her residence in late May 2009. She testified that she cared for Zachary at her residence through September 2009. She further testified that she provided for her own living expenses but acknowledged that Zachary purchased gravel for her driveway and paid for several of their trips. While she acknowledged stating that she would not remarry because she would lose her maintenance, she testified that Zachary had not proposed to her.

Following the hearing, the family court, citing *Combs v. Combs*, 787 S.W.2d 260 (Ky. 1990), found that Linda's temporary cohabitation with Zachary was not of a nature sufficient to constitute a change of circumstances rendering the continuation of maintenance unconscionable. The family court found that Linda permitted Zachary to reside with her to assist with his convalescence, not for the purpose of acquiring a financial resource. Although noting that Linda stated that she would not remarry because she would lose her maintenance, the family court found no evidence that Linda and Zachary planned or discussed marriage. The family court found that Linda and Zachary were merely in the dating stage.

James contends that the family court erred by not terminating his maintenance obligation because Linda's cohabitation was sufficient to render

continued maintenance unconscionable. He argues that Linda's and Zachary's relationship was more than casual dating, that Zachary provided a financial benefit to Linda, and that Linda was avoiding marriage to retain her maintenance. James argues that these facts compel a conclusion that the family court committed error.

To modify a maintenance order, a litigant must prove a change of circumstance so substantial and continuing to make its provisions unconscionable. *Woodson v. Woodson*, 338 S.W.3d 261, 263 (Ky. 2011). In cohabitation cases, "a maintenance recipient's cohabitation can render continued maintenance 'unconscionable' if the nature of the cohabitation constitutes a new 'financial resource' as contemplated in KRS 403.200(2)(a)." *Combs*, 787 S.W.2d at 262. The Court stated that it did not intend to open the floodgates to motions to terminate or suspend maintenance payments simply because a maintenance recipient has begun dating or formed a casual relationship with a person of the opposite sex. *Id.*

Providing guideposts to family courts, the court listed six factors that must be considered in determining if cohabitation constitutes a substantial change in circumstances making continued maintenance unconscionable. *Id.* The factors listed by the court are as follows: 1) the duration and permanency of the relationship; 2) the economic benefit and change of economic position; 3) the parties' intent and the cohabitating spouse's avoidance of remarriage to keep maintenance; 4) the nature of the living arrangement; 5) the comingling of financial resources and obligations; and 6) the likelihood of a continued

relationship. *Id.* In applying these factors, we are reminded that a family court has broad discretion, and its decision cannot be reversed absent an abuse of discretion. *Daunhauer v. Daunhauer*, 295 S.W.3d 154, 156 (Ky.App. 2009). With this legal framework in mind, we turn to James's allegation on appeal.

While James points out that Linda and Zachary have known each other for forty-five years, the testimony revealed that Linda and Zachary attended school together, knew each other before Linda's marriage to James, and did not begin dating until March 27, 2009. Although James correctly states that Zachary paid for several short trips and purchased gravel for Linda's driveway, there was testimony that Linda and Zachary did not share bank accounts or assist in providing for each other's everyday living expenses.

After suffering serious medical events in the spring of 2009, Zachary moved into Linda's residence in late May 2009 for a period of five months. At the end of September 2009, Zachary left Linda's residence. Zachary then returned to his residence and was assisted by his daughter, who had moved into his home. Although James emphasizes Linda's statement that she would not remarry because she would lose her maintenance, the testimony revealed that Zachary had not asked Linda to marry him. Further, the family court found that there was no evidence that the parties planned to continue their relationship indefinitely but only planned on continuing their dating.

Based on the record, we conclude that the family court did not abuse its discretion by finding that a change of circumstance so substantial and

continuing to make continued maintenance unconscionable has not occurred. We recognize the sensitive nature regarding divorce, maintenance, and subsequent cohabitation. However, Kentucky courts cannot provide maintenance relief in every situation in which the maintenance recipient begins dating. *Combs*, 787 S.W.2d at 262. Rather, maintenance orders can be modified due to cohabitation when the nature of the cohabitation creates a new “financial resource.” *Block v. Block*, 252 S.W.3d 156, 162-63 (Ky.App. 2007) (internal citations omitted). Under the circumstances, the family court did not abuse its discretion.

For the foregoing reasons, the order of the Webster Family Court denying James’s motion to terminate maintenance is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Clint Prow  
Providence, Kentucky

BRIEF FOR APPELLEE:

Amealia R. Zachary  
Dixon, Kentucky