

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002364-MR

PARKER W. EADS

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE DONNA DELAHANTY, JUDGE
ACTION NO. 93-FD-003231

MAUREEN FOLAN EADS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; MOORE AND WINE, JUDGES.

TAYLOR, CHIEF JUDGE: Parker W. Eads brings this appeal from a September 16, 2009, order of the Jefferson Circuit Court, Family Court, denying his motion to terminate maintenance. We affirm.

Parker and Maureen Folan Eads met in 1979, while Parker was a student at Harvard Law School. Maureen had emigrated from Ireland and was working as a nurses' assistant. In 1981, the parties moved to Kentucky and were

married. Parker accepted a position as an attorney with the firm of Wyatt, Tarrant, and Combs in Louisville, Kentucky. Maureen never returned to work after the parties married. Parker and Maureen's only child was born in 1983. Apparently, both Parker and Maureen abused alcohol during the marriage. In fact, Parker admitted that he abused alcohol from 1982 until 1988. Despite his alcoholism, Parker was able to maintain his employment with the law firm. In 1991, some three years after achieving sobriety, Parker became a partner in the law firm. The parties ultimately separated in 1993, whereupon Parker filed a petition to dissolve the marriage. Maureen apparently received treatment for her alcohol dependency in 1997.

The parties' marriage was dissolved by decree of dissolution of marriage entered on February 13, 1997. The decree dissolved the marriage but reserved ruling on all other issues. Findings of Fact, Conclusions of Law, and Judgment (judgment) was subsequently entered on October 1, 1997, adjudicating all remaining issues. Relevant to this appeal, the judgment provided:

The Court has reviewed the expense list of each party and the evidence as to the financial obligations and income of [Parker]. The Court concludes that [Maureen] is entitled to an award of permanent maintenance in the sum of \$1,500.00 per month, which is to be non-modifiable for a period of twenty-four months. Said maintenance award shall remain in effect, but subject to the modification and termination provisions set forth in [Kentucky Revised Statutes] KRS 403.250 thereafter.

For some twelve years, Parker paid Maureen \$1500 per month in maintenance. Then, on April 16, 2009, Parker filed a motion to terminate

maintenance based upon a change in circumstances under Kentucky Revised Statutes (KRS) 403.250. Parker stipulated that he voluntarily resigned as a partner in the law firm in November 2007 and further admitted his income in years prior to 2008 exceeded \$200,000. Parker also had subsequently remarried and at the time of filing this motion, he stayed at home taking care of his two minor children. By order entered September 16, 2009, the family court denied Parker's motion in part and granted in part. The circuit court ordered Maureen to apply for social security benefits and, if ultimately awarded same, the court would then adjust the maintenance award proportionately. The family court made the following findings and orders:

The change in circumstance that [Parker] alleges is his voluntary resignation from a partnership in a large and well known law firm. [Parker] holds a degree from a prestigious law school. He has made a six figure income for at least sixteen years, with the exception of 1993, when he made close to \$100,000.00 He is relatively young and in good health. For the most part, his financial needs, as well as a portion of his adult son's needs, are met by his current wife's income. He did testify that their house has been refinanced to save approximately \$300.00 per month. He is unaware of his current stocks and bonds as his wife handles all investments. The Court cannot find that his current situation is a changed circumstance beyond his own control. It was noted in the [Findings of Fact, Conclusions of Law, and Judgment] that the parties had lived beyond their means prior to the dissolution, and the Court specifically stated when [Parker] objected to the maintenance award as beyond his financial means, "[Parker] has sufficient funds available to meet his obligations, and that it is incumbent upon him to manage his finances so as to meet the obligation." See Order entered January 13, 1998.

[Parker] is capable of some employment and he has had time to seek and secure employment, whether it might be employment that appeals to him or not. It appears to this Court that [Parker], knowing of his responsibility to pay maintenance, earning a substantial salary over a long period of time, being aware that he had voluntarily resigned and that an income stream would end on a future date certain could have set aside an amount of monies sufficient to cover his legal responsibility for the payment of maintenance. Instead, [Parker] has waited until his income has dried up to throw up his hands. [Parker] was not forthcoming as to the details of his resignation contract nor what, if any, alternate benefits flowed from such voluntary resignation. Further, [Parker] voluntarily supports the parties' adult son who has finished his schooling, with an amount of money nearly equal to that of the maintenance award.

[Maureen] has not achieved self-sufficiency. Far from it. However, she is of retirement age. As such, she may be entitled, based on the length of her marriage to [Parker], to receive social security benefits in an amount equal to or close in amount to what she has been entitled to receive through maintenance. Once in receipt of such benefits, she could be said to have achieved self-sufficiency which would be the changed circumstance necessary to terminate the maintenance award in the circumstances surrounding this particular case. Based on [Maureen's] fragile demeanor in the current hearing, which is in contrast to the erratic behavior described at the time of the dissolution, and the possibility that she may need to obtain foreign documents, [Maureen] may need assistance in applying for such benefits.

Based on the record, the testimony, the documentary evidence of which there was very little, and the arguments of counsel,

IT IS ORDERED that [Parker's] motion for modification or termination of maintenance be and it hereby is **DENIED** in part and **GRANTED** in part. This Court shall give [Maureen] a period of ninety days from the date of entry of this Order to apply for social security

benefits. [Maureen] shall submit proof of such application to [Parker's] attorney who shall assist with any information required to establish eligibility. If eligibility for social security is established and such monthly payment equals or is greater than the current maintenance award, then [Parker] may terminate maintenance effective on the first day of receipt of such social security award. If eligibility is established and such monthly benefit is less than the established maintenance award, the current maintenance award may be modified to the amount necessary to make up the difference between the maintenance currently awarded and the social security payment received. Such modification would become effective on the first day of receipt of such social security award. If [Maureen] is not eligible for social security benefits, then this Court cannot find such changed circumstances exist that would allow termination or modification of the maintenance award.

This appeal follows.

Parker contends that the family court erred by denying in part his motion to terminate maintenance. Parker specifically asserts that the family court abused its discretion by failing to consider the passage of time (twelve years) “as a substantial and continuing change in circumstances making spousal support unconscionable” per KRS 403.250. And, Parker maintains that the court erred by finding that Maureen was unable to work for medical reasons.

KRS 403.250 controls modification or termination of maintenance. Subsection (1) of KRS 403.250 provides that “the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable.”

Generally, the trial court possesses broad discretion when ruling upon

maintenance. *Barbarine v. Barbarine*, 925 S.W.2d 831 (Ky. App. 1996). Absent an abuse of discretion, the appellate court will not disturb the trial court's ruling if it is supported by substantial evidence. *Id.*

In its order, the family court considered whether "changed circumstances" had occurred that would render the maintenance award of \$1,500 per month to Maureen unconscionable. In finding that no such changed circumstances occurred, the court considered the following facts: (1) Parker voluntarily resigned from his six-figure employment, (2) Parker was highly educated and possessed vast experience which would allow him to find suitable employment, (3) Parker was only fifty-two years of age and was in good health, (4) Maureen was not self-sufficient, (5) Maureen was older (sixty-two years old) and had not been employed since the parties moved to Kentucky in 1981, and (6) Maureen had relied upon maintenance as her sole means of support since the divorce in 1997.

From review of the entire record, it was apparent that Maureen's circumstances had not significantly changed since the court's original award of maintenance. And, the prospect of improvement in her circumstances was bleak absent her entitlement to social security benefits. As to Parker, the family court noted his recent lack of employment but found that such did not constitute a change in circumstances since Parker was highly educated and could easily find suitable employment.

Upon the whole, we cannot say that the family court's factual findings were not supported by sufficient evidence of a probative value or that the family court otherwise abused its discretion in ordering the continuation of maintenance. The record clearly supports the family court's finding that a change in circumstances had not occurred so as to render its original maintenance award unconscionable per KRS 403.250. As such, we perceive no error.

For the foregoing reasons, the Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT:

J. Russell Lloyd
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Scott E. Powell
Louisville, Kentucky