

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000940-MR

JEFFREY CASTLE

APPELLANT

APPEAL FROM JOHNSON CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE JANIE MCKENZIE-WELLS, JUDGE
ACTION NO. 09-CI-00026

BRENDA ESTEP CASTLE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, LAMBERT, AND VANMETER, JUDGES.

LAMBERT, JUDGE: Jeffrey Castle has appealed from the judgment of the Johnson Circuit Court awarding maintenance to his former wife, Brenda Estep Castle. Discerning no abuse of discretion in the award, we affirm.

Brenda and Jeffrey were married on July 22, 1987, in Johnson County, Kentucky. They separated on December 20, 2008, and Brenda filed a

petition to dissolve the marriage on January 20, 2009. She requested that the marital property be divided and the marital debt be allocated. At the time the petition was filed, Jeffrey was a member of the Army reserves but was not deployed at that time. He had previously been deployed to Iraq. In his answer, Jeffrey also requested that the marriage be dissolved and for an equitable division of the marital property and debt. During the pendency of the proceedings, the trial court ordered Jeffrey to pay Brenda \$325.00 per month in temporary maintenance.

Prior to the final hearing in this matter, the parties filed their respective financial disclosure statements with the court. Brenda's statement indicated that she was unemployed, that her monthly income consisted of \$808.00 in social security benefits and \$325.00 in temporary maintenance, and that her monthly expenses were slightly more than \$1,200.00. Jeffrey's statement established that he earned approximately \$1,216.00 per month from his work as a corrections officer at the Otter Creek Correctional Center. He indicated that his monthly expenses totaled \$2,094.00.

The trial court held the final hearing on February 18, 2010. Brenda testified that at the time of the hearing, she was forty-nine years old and lived in Thelma, Kentucky. She is a high school graduate but was unemployed due to health problems. She stated that she was in remission from breast cancer and that she was still taking medication to treat both the cancer and the resulting effects of her cancer treatment. These medications would no longer be covered by Jeffrey's military insurance once the marriage was dissolved, but they would be covered by

Medicare starting in June 2010. The effects of the treatment rendered her unable to work due to nerve damage and memory loss. Brenda requested \$400.00 per month in maintenance because she would not be able to maintain her standard of living without it.

Regarding property, Brenda testified that they had not acquired any real property during the marriage and that she and Jeffrey had divided most of the items of personal property. She stated their trailer had been bankrupted and that her Ford Explorer had been repossessed. She was currently driving a 1975 Jeep belonging to her brother. The only items of personal property not divided were guns, knives, and ammunition. In addition to half of the value of the weapons and ammunition, Brenda requested half of the parties' 2008 income tax refund and half of any military bonuses Jeffrey received.

Jeffrey also testified. At the time of the hearing, he was forty-one years old and had worked since June 2009 at the Otter Creek Correctional Center in Wheelwright, an hour away from his residence in Prestonsburg. For his work as a correctional officer, he netted between \$600.00 and \$625.00 every two weeks, inclusive of base pay at a rate of \$8.25 per hour and overtime. He also received military pay of between \$150.00 and \$300.00 per month for his work in the Army Reserves. He indicated that his military service would end in September 2010, but that he had not decided whether he would reenlist. When he previously reenlisted, he received a \$3,000.00 bonus, which was spread over a six-year period. He received a \$500.00 bonus after the separation and expected the remainder at the

end of his service. Jeffrey testified that his monthly expenses totaled approximately \$2,000.00. However, his parents paid several of his expenses that he was unable to afford, including his temporary maintenance payments to Brenda and his \$613.00 truck payment. He had been unable to pay maintenance himself since the case started, and he planned to file for bankruptcy protection.

Regarding personal property, Jeffrey testified that Brenda had taken most of the items from the mobile home. However, he had taken items from the gun room including books, an end table, hunting items, and a bowflex. Jeffrey also had additional hunting items in another building.

The trial court entered its findings of fact, conclusions of law, decree of dissolution of marriage, order and judgment on April 8, 2010. After making the necessary statutory findings, the trial court dissolved the marriage between Brenda and Jeffrey and ordered each party to keep the personal property items in their possession along with any associated debt. The court then equally split between them the value of the weapons and ammunition, the tax refund, and the military bonus. None of these rulings have been challenged in this appeal. The trial court then awarded maintenance to Brenda in an amount of \$325.00 per month for twelve years or until she remarried. The court specifically based its award on Brenda's serious medical condition, the twenty-one-year duration of the marriage, and her high school education.

Jeffrey moved the trial court to alter, amend, or vacate its judgment as to the award of maintenance. He argued that no evidence had been introduced

regarding Brenda's standard of living or to establish that she was unemployable and could not support herself through appropriate employment. Likewise, no evidence of her current medical status had been introduced. He also argued that Brenda had taken all of the household furnishings and appliances when she left, and that her social security benefits equaled more than two times his disposable monthly income. The trial court summarily denied Jeffrey's motion on April 29, 2010. This appeal follows.

On appeal, the sole issue Jeffrey raises is the propriety of the trial court's award of maintenance. He argues that the trial court abused its discretion in both the amount and duration of maintenance awarded to Brenda.

The General Assembly provided for the award of maintenance in Kentucky Revised Statutes (KRS) 403.200. KRS 403.200(1) provides that a court may grant maintenance only if it finds the spouse seeking it lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs and is unable to support himself through appropriate employment. "While the award of maintenance comes within the sound discretion of the trial court, a reviewing court will not uphold the award if it finds the trial court abused its discretion or based its decision on findings of fact that are clearly erroneous." *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003). *See also Brenzel v. Brenzel*, 244 S.W.3d 121, 126 (Ky. App. 2008) ("An award of maintenance and the amount are within the discretion of the trial court."). Jeffrey does not appear to

argue that this initial finding was improper, but confines his argument to the amount and duration of the award.

If it decides that an award of maintenance is appropriate, a trial court must then consider all of the relevant factors as listed in KRS 403.200(2) in determining the amount and duration of maintenance that should be awarded. These factors include the spouse's financial resources, the time needed to obtain sufficient education or training, the standard of living during the marriage, the duration of the marriage, the age and condition of the spouse seeking maintenance, as well as the ability of the paying spouse to meet his own needs. Similar to the decision to award maintenance, "the amount and duration of maintenance is within the sound discretion of the trial court." *Weldon v. Weldon*, 957 S.W.2d 283, 285 (Ky. App. 1997). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004) (citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted)); *Kentucky Nat. Park Com'n ex rel. Commonwealth v. Russell*, 301 Ky. 187, 191 S.W.2d 214, 217 (1945).

Jeffrey contends that the record lacks substantial evidence to support the findings upon which the maintenance award was based. He points to considerations under three subsections of the statute which he claims do not support an award under the circumstances of this case.

First, he argues that KRS 403.200(2)(a) does not support the award. That subsection requires a trial court to consider the financial resources of the spouse

seeking maintenance and that person's ability to meet his or her needs independently. Jeffrey argues that he and Brenda had substantially equivalent monthly financial resources in that she received \$808.00 in social security benefits and was in a relationship with another man, while his own resources equaled \$1,250.00 per month.

On the other hand, Brenda argues that this argument is not credible and points out that she had no income except through food stamps and church and local area donations until she received social security benefits. She also disputes Jeffrey's claim that he only makes \$1,250.00 per month, relying on his response to her motion for temporary maintenance filed during the early stages of this action in which he stated he brought home \$2,100.00 per month as well as an additional \$400.00 in potential military pay. However, when Jeffrey filed that response, he was working for another employer, and we recognize that his financial disclosure statement filed prior to the hearing supports his claim concerning his income from his current employer.

Having considered the evidence of record, however, we cannot agree with Jeffrey that he and Brenda have substantially equivalent incomes. That she is in another relationship has no bearing on her financial resources, and there is no evidence that her current boyfriend was supplementing her income in any fashion. Furthermore, the record reflects that Jeffrey, too, is in another relationship. We also recognize that Jeffrey did not include any potential military pay in his income, which the court would have considered in determining maintenance. While he

testified that his military service contract was set to end in September 2010, he had not decided whether to reenlist at the time of the hearing and there was no reason that the court would have disregarded that additional source of income when weighing the relevant factors. Jeffrey was also due to receive the remainder of the reenlistment bonus at the time his contract expired. Furthermore, while Brenda received much of the parties' personalty including furniture and electronics, she also was allocated the debt associated with many of those items. Therefore, we disagree with Jeffrey's contention that the trial court abused its discretion in considering the financial resources of the parties.

Next, Jeffrey addresses the trial court's consideration under KRS 403.200(2)(e), which concerns the age of the spouse seeking maintenance as well as his or her physical and emotional condition. Jeffrey contends that there was no evidence in the record that Brenda's age or condition was debilitating. Brenda disagrees, pointing out her treatment for breast cancer, including chemotherapy and radiation, as well as her ongoing medication regimen due to side effects from the cancer treatment. Brenda suffered from nerve damage to her leg, arm, and shoulder, memory loss, panic attacks, and depression, and she must take medication to treat her condition. She stated she must take the cancer medication for five years, and must continue taking the remainder of the medication for the rest of her life. Despite the fact that Brenda's cancer is in remission, we find no error or abuse of discretion in the trial court's consideration of this factor when deciding the issue of maintenance.

Finally, Jeffrey contends that the trial court did not properly consider his ability to meet his own needs while meeting those of Brenda pursuant to KRS 403.200(2)(f). He asserts that he is unable to meet his own monthly expenses and that his parents have had to pay his temporary maintenance and truck payments. He also claims that his claimed monthly expenses (\$2,094.00) exceed Brenda's (\$1207.67) by more than \$800.00. We note that Jeffrey's claimed expenses include the \$613.00 truck payment that he testified is being paid by his parents. The trial court certainly would have considered all of these facts when determining an appropriate amount of maintenance.

In reviewing the record as a whole, including the trial court's specific considerations of Brenda's breast cancer, the length of the marriage, and her lack of education past high school, we hold that the trial court did not abuse its discretion either in the amount or duration of maintenance it awarded. While we certainly sympathize with Jeffrey's financial situation, we must point out that even with maintenance and her social security benefits combined, Brenda will still not be able to meet her monthly expenses. Therefore, we cannot identify any error or abuse of discretion in the trial court's ruling.

For the foregoing reasons, the trial court's award of maintenance is affirmed.

VANMETER, JUDGE, CONCURS.

CLAYTON, JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

J. D. Johnson
Paintsville, Kentucky

BRIEF FOR APPELLEE:

Paul L. Pack
Paintsville, Kentucky