RENDERED: APRIL 26, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-002209-MR

JENNIFER FANNIN APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE DAVID D. FLATT, SPECIAL JUDGE
ACTION NO. 11-CI-00345

JOHN M. FANNIN APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: CAPERTON, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jennifer Fannin brings this appeal from an October 28, 2011, Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage rendered by the Greenup Circuit Court, Family Court Division (family court). We affirm in part, reverse in part, and remand.

Jennifer and John Michael Fannin were married on September 26, 1981, and three children were born of the parties' marriage.[1] During the marriage, John worked for C & O Railways; Jennifer worked briefly but had not worked outside the home since 1988. The parties separated on July 9, 2010, and Jennifer filed a petition for dissolution of marriage on May 10, 2011. At the time of the dissolution proceeding, John was receiving a disability pension from the railroad in the net amount of $2,270.81 per month.

Pursuant to the October 28, 2011, Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage, the parties were awarded joint custody of their seventeen year old daughter, and John was designated the primary custodian. Jennifer was ordered to pay child support of "$184.10 per month beginning September 1, 2011 and continuing until the minor child is 18 years old or graduates from high school." The parties' only substantial asset was their marital residence which was not encumbered by a mortgage.[2] John was awarded the marital residence and ordered to secure financing to purchase Jennifer's one-half interest.[3] John was also ordered to pay Jennifer maintenance of $550 per

[1] The parties' two oldest children were emancipated at the time of the dissolution of marriage proceeding. The remaining child was seventeen at the time the decree of dissolution was entered.

[2] Evidence was presented that past due property taxes were owed on the marital residence and that there was a judgment lien against the residence.

[3] The parties testified that the value of the marital residence was between $75,000 and $85,000. The family court ordered an appraisal, but at the time of the filing of the notice of appeal there was not an appraisal included in the record.

month until she received funds representing her share of the marital home or until she "either wins or is denied her social security." This appeal follows.

Jennifer contends that the family court erred as to the amount and duration of the maintenance award. Jennifer specifically contends that the award of maintenance should have been permanent and that the amount of maintenance awarded was inadequate.

Kentucky Revised Statutes (KRS) 403.200(2) requires the family court to consider "all relevant factors" when determining the amount and duration of a maintenance award:

> (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
>
> (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
>
> (c) The standard of living established during the marriage;
>
> (d) The duration of the marriage;
>
> (e) The age, and the physical and emotional condition of the spouse seeking maintenance; and
>
> (f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

In this Commonwealth, an award of maintenance is generally considered rehabilitative in nature and, thus, normally limited in duration. *Leitsch v. Leitsch*,

839 S.W.2d 287 (Ky. App. 1992). Where rehabilitation is not possible, the statutory scheme operates to prevent a "'drastic change' in the standard of living" established during the marriage. *Id.* at 290 (citation omitted). And, it is axiomatic that the amount and duration of a maintenance award is within the sound discretion of the circuit court. *Gentry v. Gentry*, 798 S.W.2d 928 (Ky. 1990). And, an award of maintenance will not be reversed unless there is a clear abuse of discretion. *Combs v. Combs*, 622 S.W.2d 679 (Ky. App. 1981).

In the case *sub judice*, the evidence indicates that the family court considered the relevant factors identified in KRS 403.200. Although the amount of marital property apportioned to Jennifer was modest, the circuit court awarded her a lump sum amount representing one-half of the value of the marital residence.[4] Jennifer did testify she suffered from significant health issues that prevented her from working but failed to offer any medical evidence of same. Jennifer also testified that she had applied for social security disability benefits, but her request was denied. Jennifer stated that she was appealing the denial. Conversely, the record reflected that John received a disability pension benefit from the railroad in the net amount of $2,270.81 per month. John testified that he believed Jennifer was not working because she had a prescription drug addiction. John also testified that he was having a difficult time "making ends meet" but conceded that he could pay Jennifer maintenance of $450 per month.

[4] There was evidence that the marital residence was valued between $75,000 to $85,000.

Under the circumstances of this case, we do not believe the family court abused its discretion by awarding Jennifer $550 per month in maintenance until she receives her lump sum payment representing her one-half interest in the residence or until she either receives or is denied disability benefits. Considering the modest standard of living established during the marriage, the lack of marital assets, and the minimal amount of John's disability benefit, we are of the opinion that the amount and duration of the maintenance award was not an abuse of discretion.

Jennifer next contends the family court erred by ordering the child support award retroactive to September 1, 2011. Jennifer argues that James did not file a motion for child support on September 1, 2011; thus, the retroactive award of child support from that date was erroneous.

It is well-established that child support may only be made retroactive to the date of the filing of a motion for child support. *See Giacalone v. Giacalone*, 876 S.W.2d 616 (Ky. App. 1994). Given that John did not file a motion for temporary child support as permitted by KRS 403.160, we believe the family court erred by ordering the award of child support retroactive to September 1, 2011, and we reverse such award. Upon remand, the circuit court shall award child support to John effective from October 28, 2011.

In sum, we hold that the family court properly awarded maintenance to Jennifer, but the family court erred by awarding child support retroactive to

September 1, 2011. Upon remand, the family court shall amend the effective date of its child support award to the date of the decree, October 28, 2011.

For the foregoing reasons, the Order of the Greenup Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey D. Tatterson
Russell, Kentucky

BRIEF FOR APPELLEE:

Jeffrey D. Hensley
Flatwoods, Kentucky