

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000421-MR

RICHARD SULLIVAN

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE ELEANORE GARBER, JUDGE
ACTION NO. 10-CI-503857

LUCINDA SULLIVAN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; D. LAMBERT AND NICKELL, JUDGES.

ACREE, CHIEF JUDGE: Appellant, Richard Sullivan appeals from the Jefferson Family Court's December 2, 2013 order awarding maintenance to Lucinda Sullivan, his former wife and Appellee in this case. Because the trial court did not abuse its discretion in awarding Lucinda maintenance, we affirm.

I. Background

In 2012, Richard and Lucinda Sullivan divorced after thirty-four years of marriage. In settling their affairs, the parties divided their assets according to an agreement that required that Richard pay Lucinda maintenance for at least one year after which either party could move the court for a modification. When that year ended, Richard moved to eliminate his maintenance obligation, citing his impending retirement as grounds for the modification.

The family court heard Richard's motion on August 2, 2013. Both Richard and Lucinda testified at the hearing. Both are in their early seventies. Richard is a practicing attorney and founding partner of a local firm. Lucinda, on the other hand, left her career as a real estate agent sometime in the late 1980s. After leaving the workforce, Lucinda cared for Richard's two young children. Lucinda also testified that she travelled with Richard for work, and helped him type, edit, and read his legal documents.

Although Lucinda did not work, Richard's income provided them a comfortable lifestyle during their marriage. They owned homes both in Kentucky and Florida; they vacationed throughout the country; and Richard gave Lucinda a monthly allowance of approximately \$11,000.00 for both household and personal expenses until their marriage ended.

Richard testified at the hearing that his income would dramatically decrease upon retirement. He said he was selling his interest in the firm, winding down his practice, and relying on his current holdings, minor incoming

payments, and potential income from a rental property to sustain him in retirement. On cross-examination, Richard revealed that while he intended to retire, he had yet to reach an agreement regarding how to settle his practice. Testimony also reveals that Richard's projected post-retirement income was tentative, not certain; Richard had yet to negotiate exactly the terms of his buy-out and was unsure as to how, or if, he wanted to relinquish the entirety of his firm's assets.

The family court entered its order on December 2, 2013, awarding maintenance to Lucinda. In making that decision, the family court employed a multi-factor analysis pursuant to Kentucky's spousal maintenance statute, KRS¹ 403.200. The family court recognized that Lucinda would be unlikely to find employment due to her age, and long period away from the workforce. Although Lucinda did receive half the proceeds from the sale of the couple's marital assets, the family court noted that Richard's holdings were substantially larger than Lucinda's. Even in light of the fact that Lucinda obtained considerable personal wealth from the division of marital assets, the family court determined she was still entitled to maintenance, due in part to her age, and her likely difficulty in re-entering the workforce. Assessing Richard's testimony regarding his post-retirement income and substantial wealth, the court concluded that Richard still could afford monthly maintenance payments. It reduced Richard's monthly maintenance award from over \$9,000.00 to

¹ Kentucky Revised Statutes.

\$6,500.00. In setting the amount of maintenance, the family court specified that it considered relevant factors stated in KRS 403.200(2), noting the parties' pre-divorce lifestyle, Richard's sizeable assets, and the minimal possibility that Lucinda could find suitable employment.

Now Richard appeals, claiming the family court abused its discretion by awarding maintenance.

II. Standard of Review

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). Absent an abuse of that discretion, we will not disturb an award of maintenance on appeal. *Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992). Family courts abuse their discretion when their decisions are "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Wildcat Property Management, LLC v. Reuss*, 302 S.W.3d 89, 93 (Ky. App. 2009) (citation omitted).

III. Analysis

KRS 403.200 sets forth the parameters governing maintenance awards. The statute requires the family court to engage in a two-step process. First, the court must determine whether the party seeking maintenance is entitled to it and, second, the court must establish the amount and duration of any maintenance award. KRS 403.200(1), (2).

Maintenance is proper if the spouse seeking it:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

KRS 403.200(1)(a), (b). The amount and duration of a maintenance award turns on the following:

(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.

KRS 403.200(2).

Richard challenges the family court's maintenance award on two grounds. First, he argues the family court unreasonably applied KRS 403.200 to

the facts. Richard claims the family court failed to account for Lucinda's considerable wealth and ignored the impact of Richard's imminent retirement on his ability to meet his maintenance obligation.

However, Richard's argument fails because the family court appropriately applied the law to these very facts. First, the family court recognized that Lucinda lacked sufficient resources to meet her needs and that she was unlikely to find suitable employment in light of her age and lack of work experience. When it set the amount of maintenance, the court noted the considerable wealth Richard had accumulated during his career, as well as his projected post-retirement expenses. The court also recognized that Richard testified that he had active investments – including rental property and minor accounts receivables. Furthermore, at the time of the hearing Richard's plans for retirement were, at best, uncertain; he was still practicing law and receiving income from that practice. Richard had yet to finalize the terms of his buy-out, and while he expressed his strong desire to retire, he was unable to demonstrate that his income had decreased so significantly as to absolve him of paying any maintenance whatsoever.

It may well be that after Richard actually leaves the workforce his income would be reduced, but when the family court heard Richard's motion, this had yet to occur. Accordingly, after carefully reviewing the record in light of Kentucky's maintenance statute, we cannot say the trial court's conclusions were unreasonable, particularly in light of the testimony adduced at the hearing.

Second, Richard claims that the family court's order, in effect, prevents him from retiring because he will be forced to work in order to cover his expense and maintenance obligation. Again, this argument fails, because at the time of the hearing, Richard was only able to provide rough, speculative estimates regarding his post-retirement financial outlook. When Richard took the stand as a witness, he was still an equity partner and active member of a successful law firm -- not a retiree. As movant, Richard had the burden to prove his circumstances had changed so significantly as to warrant a change in the award, not that he assumed that they would change in the near future. We reiterate, as does the family court's order, that if and when those circumstances change, Richard may again seek modification; the family court's order specifies that either party may again request further modification depending upon an actual change in circumstances.

In hearing Richard's request for modification, the family court considered the facts, and applied them to the law. As an appellate court, we abstain from altering the family court's orders unless they are so unreasonable as to constitute an abuse of discretion. Here the family court considered the evidence, including the parties' ages, their work experience, and their respective assets based on testimony and information available at the time of the hearing. While either party's circumstances may change in the future, based on our review of the record, we cannot say that the family court abused its discretion in this instance.

IV. Conclusion

The Jefferson Family Court's December 2, 2013 order awarding maintenance to Lucinda Sullivan is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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