

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002012-MR

JAMES E. BROOKS

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE HUGH ROARK, JUDGE  
ACTION NO. 85-CI-000734

SIGRID M. BROOKS

APPELLEE

### OPINION

### AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: EMBERTON, GARDNER, AND MILLER, JUDGES.

MILLER, JUDGE: James E. Brooks brings this appeal from a July 11, 1997, order of the Hardin Circuit Court. We affirm.

The facts are these: Appellant and appellee were married on November 13, 1963. They were divorced by a Decree of Dissolution of the Hardin Circuit Court on October 15, 1986. At the time, the court ordered appellant to pay \$550.00 per month in permanent spousal maintenance. Said amount was subsequently reduced in 1988 to \$450.00 per month. Appellee then filed a motion to increase maintenance and to collect arrearage.

Appellant counter-petitioned to terminate or reduce maintenance. The circuit court submitted the matter to a domestic relations commissioner (commissioner), who determined that appellant's maintenance obligation should not be terminated but reduced to \$337.50 per month. Objections were filed thereto. The court ultimately affirmed and adopted in its entirety the commissioner's report, thereby reducing appellant's maintenance obligation accordingly. This appeal follows.

Appellant contends that the circuit court abused its discretion by not terminating maintenance. Ky. Rev. Stat. (KRS) 403.200(1) states in relevant part as follows:

[T]he court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

- (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 . . . .

Further, KRS 403.250 provides that maintenance may be modified only upon showing of changed circumstances "so substantial and continuing as to make the terms unconscionable." The decision to award or modify maintenance is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse thereof. See Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977).

In the instant case, it appears that:

[t]he Petitioner [appellant] lost his job with Payless on January 17, 1997 because the owner closed the business. From this

employment, he earned \$36,692.43 in 1996.

. . .

The Petitioner is currently drawing gross unemployment benefits of \$220.00 per week or \$953.26 per month and receives net unemployment benefits of \$178.00 per week or \$771.27 per month. He also receives military retirement benefits of approximately \$1,035.00 per month which gives him a total net monthly income of \$1,806.27 per month. This is a 25% decrease from his earnings in 1988 when his maintenance obligation was last determined. . . .

. . .

The Petitioner has married and listed his monthly expenses on Exhibit P-4 which total \$2,507.00 per month for his family. . . .

. . . [Appellee] presently works on an on-call basis at Churchill Downs and has been earning \$70.00 per week but expects this employment to end on June 30, 1997. The Respondent [appellee] testified that her total earnings from employment in 1997 through the date of this hearing are \$300.00. She currently receives military retirement benefits of \$560.35 per month and net unemployment benefits of \$27.00 per week when she does not work. The Respondent has been unable to find other employment because of her poor health. She suffers from arthritis and has three tumors which require surgery. The Respondent has listed her monthly living expenses on Exhibit R-4 which totaled \$1,600.00.

The evidence is uncontradicted that appellee lacked sufficient property to provide for her reasonable needs under KRS 403.200. Because of appellee's age, poor health, limited education, and complete lack of skills for "better than minimum wage employment," the court also found that she was unable to support herself through appropriate employment. Upon these findings, the court concluded that appellee was in continued need of maintenance. The circuit court did, however, reduce

appellant's maintenance obligation by 25% "which corresponds with the amount of his reduction in income." Considering the record as a whole, we are unable to conclude that the circuit court abused its discretion. Id. Simply stated, we cannot say that the circuit court's findings as to appellee's entitlement to maintenance or the amount thereof were clearly erroneous. See Perrine v. Christine, Ky., 833 S.W.2d 825 (1992).

For the foregoing reasons, the order of circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Barry Birdwhistell  
Elizabethtown, KY

BRIEF FOR APPELLEE:

Nick L. Pearl  
Radcliff, KY