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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NOS. 1998-CA-002701-MR
AND 1999-CA-000036-MR

STEVEN R. HAYES — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS PAISLEY, JUDGE
ACTION NO. 91-CI-00377

SHIRLEY HAYES — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BUCKINGHAM, EMBERTON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Because we cannot say that the change in circumstances is so substantial and continuing as to make the original maintenance award unconscionable, we affirm the denial of Steven Hayes's motion to reduce his maintenance obligation on grounds that his income has decreased and his former wife's income has increased. We also affirm the lower court's order requiring Steven to pay a portion of the expenses of a drug treatment program for his minor son.

Appellant, Steven Hayes ("Steven"), and appellee, Shirley Hayes ("Shirley") were married in 1968. Three children

were born of the marriage. Shirley has a Master's Degree and worked outside the home until 1985, primarily teaching English at the college level. Throughout much of the marriage, Steven was in college working toward various advanced degrees. During those years, Steven worked part-time. In 1980, Steven began medical school at the University of Kentucky. After his internship and residency, Steven was hired by the University of Kentucky as an Assistant Professor of Anesthesiology.

In 1991, Shirley filed for divorce. At that time, Shirley was 47 years of age and was not employed. Steven was 45 years old and was earning $123,000 a year, plus a bonus of $75,000, in his employment with the University of Kentucky. One of the parties' children was emancipated at the time of the dissolution, while the other two were teenagers. In the decree entered in 1991, Steven was ordered to pay Shirley $3,000 a month in lifetime maintenance. The court reasoned:

> In order for the husband to obtain his goals, the wife had to abandon her career goals and suffer the financial sacrifices entailed by the husband's extended educational pursuit. Now, by virtue of his medical degree, the husband has been able to turn famine into feast, but he apparently seeks to have his wife who supported him through all the lean years, excluded from the family table. . . The maintenance of $3,000 per month recommended by the Commissioner is the bare minimum. . . The Court finds, as did the Commissioner, that there is no reasonable prospect that Petitioner will ever be self-supporting within the meaning of KRS 403.200(1)(b) and that justice requires that she be awarded maintenance for her lifetime or until remarriage after considering all of the factors set out in KRS 403.200(2).

The parties agreed to share joint custody of the two minor children, and Steven was ordered to pay $1,500 a month in child support for the younger child who resided with Shirley. The decree also provided that Steven was to maintain health insurance on the children and was responsible for one-half of any uncovered medical expenses of the children.

Shortly after the decree of dissolution was entered, Steven left his job with the University of Kentucky and moved to Evansville, Indiana where he joined a private anesthesiology group. In 1997, he left his position with that group because his income was decreasing and because his current wife had cancer and required treatment in Atlanta, Georgia. Steven then began working for Immunocomp Laboratory in Georgia. However, his employment with Immunocomp was abruptly terminated on March 16, 1998. As of the date of the hearing in this case, Steven was employed by the Riverdale Anesthesiology Associates in Georgia, earning $162,000 a year.

In March of 1998, Steven filed a motion to reduce maintenance, citing the decrease in his income and the increase in Shirley's income. At the time of the motion, Shirley was teaching at Eastern Kentucky University earning $31,000 a year.

In August of 1998, Shirley filed a motion for medical expense arrears, seeking payment for one-half of the expenses for a drug treatment program in Memphis, Tennessee that their son, Doug, who was a minor at the time, had participated in for eleven months in 1994. Shirley maintained the expenses of the program totaled more than $14,000.

After a hearing on the motions, the court entered an order on September 1, 1998 denying Steven's motion to reduce his maintenance obligation. The court found that there had been a change in Steven's financial circumstances as a result of the decrease in Steven's income from $198,000 in 1991 to $162,000 in 1998. The court also found no bad faith in Steven's decision to leave the anesthesiology practice in Indiana and take the job in Georgia. However, the court found that although Shirley was earning $31,000 a year, it did not represent a substantial change in her financial circumstances because the court had taken into consideration the fact that Shirley would eventually earn a moderate income in determining the original award of maintenance in 1991.

As to Shirley's motion for one-half of the drug treatment program expenses, the court found that such expenses were legitimate medical expenses, but that since Steven paid child support during the eleven months that the child was in the program, it would be inequitable to require him to pay half of the program's expenses. Thus, the court denied the motion. Subsequently, Shirley filed a motion to reconsider this ruling. On September 30, 1998, the court reversed its prior ruling and ordered that Steven pay half of the costs of the program, less any expenses related to living expenses for the child while in Memphis. In a later order, the court specifically found that Steven was responsible for $4,625 of the expenses. From the orders requiring Steven to pay the drug treatment program

expenses and the order denying the reduction in maintenance, Steven now appeals.

We shall first address Steven's argument that the trial court erred in not reducing his $3,000 a month maintenance obligation to Shirley. KRS 403.250(1) 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." The word "unconscionable" as used in the above statute has been defined as "manifestly unfair or inequitable." Wilhoit v. Wilhoit, Ky., 506 S.W.2d 511, 513 (1974). Rulings regarding maintenance are within the sound discretion of the trial court, and "unless absolute abuse is shown, the appellate court must maintain confidence in the trial court and not disturb the findings of the trial judge." Clark v. Clark, Ky. App., 782 S.W.2d 56, 60 (1990), citing Platt v. Platt, Ky. App., 728 S.W.2d 542 (1987).

Steven contends that since his income has decreased, Shirley's has increased, and the court found no bad faith on his part, the court should have reduced his maintenance obligation. In our view, the existence of those factors alone does not compel a reduction in maintenance in this case.

Although Shirley is earning approximately $31,000 teaching college English, Steven, with his reduced income, is still earning four times more than Shirley. One of the main purposes of maintenance is to allow the spouse to live according to the standard of living established during the marriage. Clark, 782 S.W.2d at 61; KRS 403.200(2)(c). If Shirley's

maintenance were eliminated or significantly reduced, her income would be diminished to the point that she could no longer afford to keep her home or even a middle class lifestyle, whereas Steven would be living in a $230,000 home enjoying an affluent upper class lifestyle. We believe under the facts of this case, that would be an inequitable result. As the trial court noted in the original decree, during their 23-year marriage, Shirley gave up her career goals and supported Steven while he was in school. The court also stated in the decree that $3,000 a month was the bare minimum Steven should have to pay. With her maintenance and teaching salary, Shirley will have income of $67,000 a year, while Steven will have income of $126,000 a year after payment of his maintenance obligation, which is still almost twice Shirley's income. Accordingly, we cannot say that the change in circumstances rendered the original maintenance award unconscionable and, thus, the trial court did not abuse its discretion in refusing to reduce said award.

Steven next argues that the trial court erred in requiring him to pay half of the expenses of Doug's drug treatment program. Steven maintains that since the drug treatment program was operated by a religious organization and he did not give his approval for sending Doug there, it was not a medical expense for which he should be responsible under the decree. A trial court's findings of fact in a domestic case will not be reversed unless they are clearly erroneous. Ghali v. Ghali, Ky. App., 596 S.W.2d 31 (1980).

The evidence established that although the Second Chance Ministry was a Christian-centered drug treatment program, it was staffed with licensed medical and mental health professionals and was a licensed health care facility. There was also evidence that Doug's treating psychiatrist and psychologist both recommended that Doug be enrolled in the Second Chance Ministry to treat his drug addiction. As to Steven's argument that it was not a legitimate medical expense because his insurance company would not cover participation in the program, there was evidence that many other insurance companies did cover the program. Further, the decree specifically contemplated uncovered medical expenses. Simply because an insurance company will not pay a claim does not mean it is not a legitimate medical expense. Steven's position that expenses for drug treatment in general are not legitimate medical expenses is not well taken. Being a medical doctor, Steven should recognize both the physical and mental implications of drug abuse and the serious medical consequences thereof. In fact, KRS 403.211(8) specifically includes "professional counseling or psychiatric therapy for diagnosed medical disorders" in its definition of "extraordinary medical expenses." Thus, the lower court's finding that Doug's participation in the Second Chance Ministry drug treatment program was a legitimate medical expense was not clearly erroneous, especially given the fact that the court did not require Steven to pay any of the living expenses for the child while enrolled in the program.

For the reasons stated above, the orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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