

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000521-MR

LORETTA P. DIXON

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 97-CI-01197

MICHAEL L. DIXON

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; COMBS AND MILLER, JUDGES.

MILLER, JUDGE: Loretta P. Dixon brings this appeal from a February 2, 1999 Order of the Boyd Circuit Court. We affirm.

The parties were married in Ashland, Kentucky on October 29, 1979. They separated on November 6, 1997, and appellee filed a petition for dissolution of marriage on December 11, 1997. The parties had no minor children. The matter was referred to a domestic relations commissioner. The commissioner held a hearing and subsequently filed a report on May 29, 1998. Therein, the commissioner found that appellee was forty-five years of age and employed with Plumbers and Steamfitters Local Union 248. His gross income for 1997 was \$66,244.03. Appellant

was forty-three years of age and employed by the Ashland Independent School System as coordinator for the Youth Service Center. Her 1997 gross income was \$33,695.67 and her 1998 gross income was \$39,250.00. Appellee was awarded the marital residence and 21.60 acres of land at a value of \$125,000.00. Appellant was awarded 142 acres of vacant land at a value of \$121,500.00. Each party received their IRA accounts. Appellee was restored 143.21 shares of Duke Energy stock, and the parties were each awarded \$5,000.00, representing the cash value of their life insurance policies. They were also each awarded a sum of \$3,691.05 representing sale of livestock. Appellant was awarded a 1998 Jeep Cherokee with a value of \$20,500.00 and with no outstanding liens. The commissioner thereupon divided the household goods and furnishings between the parties. Appellant and appellee's retirement plans were also equally divided between them. The commissioner denied maintenance to appellant and required each party to pay their own attorney fees.

Both parties filed exceptions to the commissioner's decision. Appellant vigorously sought an award of maintenance. In a July 13, 1998 Order, the Boyd Circuit Court overruled the exceptions to the commissioner's report and adopted same in toto. On July 14, 1998, the court entered a Decree of Dissolution of Marriage which included the commissioner's report. Thereupon, appellant filed a motion to alter, amend, or vacate. Appellant contended that the report of the domestic relations commissioner, which was adopted by the circuit court, was based upon "erroneous incomes and values which were considered by the Commissioner

which resulted in a number of findings which were erroneous as a result of the inaccurate figures used." (February 2, 1999 Order of the Boyd Circuit Court.) The circuit court denied appellant's motion and specifically concluded that:

Obviously the significant marital property apportioned to the Respondent together with the almost \$40,000.00 per year income convinced the Commissioner that each party should pay their own attorneys fees and had the Commissioner not so recommended, this Court would have ordered it anyway. In conclusion, any fluctuation or recalculation of the parties' monthly net incomes, even as urged by the Respondent, would not have been significant enough to affect the outcome of the maintenance and attorneys fee issues raised.

This appeal follows.

Appellant's sole issue on appeal is that the circuit court committed error by denying her maintenance. She contends that appellee misrepresented his income to the court by failing to include earnings of \$1,200.00 per year in his capacity as Secretary-Treasurer of Kentucky Pipe Trades. Appellant also asserts that appellee failed to reveal that he was having at least \$100.00 or more deducted for income tax purposes and was receiving vacation pay. We do not believe the above additional income of appellee's would have mandated an award of maintenance to appellant.

Kentucky Revised Statutes (KRS) 403.200(1) states as follows:

- (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the 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 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.

It appears that appellant was awarded assets at a value of approximately \$200,000.00 and enjoyed a 1998 gross income of \$39,250.00. We are compelled to agree with the circuit court that appellant failed to meet the requirements of KRS 403.200(1). Appellant, however, argues that maintenance was required because she could not maintain the standard of living established during the marriage. We disagree. Considering appellant's award of marital assets and her ability to support herself, we are simply unable to conclude that the circuit court abused its discretion by not awarding maintenance under KRS 403.200. See Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977).

For the foregoing reasons, the Order of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John R. McGinnis
Greenup, Kentucky

BRIEF FOR APPELLEE:

David F. Latherow
Ashland, Kentucky