

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002067-MR
NO. 1999-CA-001707-MR

STEPHEN LEON EDGE

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE KELLEY ASBURY, JUDGE
ACTION NO. 94-CI-00615

JUDY ANN EDGE
AND HON. ROGER CANTRELL

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, HUDDLESTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Stephen Leon Edge appeals from two domestic relations orders regarding his obligation to pay maintenance to the appellee, Judy Ann Edge. Having concluded that the trial court's findings are not clearly erroneous, we affirm.

The parties were married on April 22, 1988. On July 12, 1994, Judy filed a petition to dissolve the marriage. Shortly thereafter, the case was held in abeyance pending the parties' attempt to reconcile. Reconciliation failed, and in March 1996, the case was redocketed. In January 1997, an agreed

order was entered wherein the parties agreed that Stephen would pay Judy temporary maintenance of \$800.00 per month.

The matter was referred to a Domestic Relations Commissioner. On June 16, 1997, the Commissioner filed his report. As to maintenance, the Commissioner's Report recommended as follows:

The Commissioner recommends that [Judy] receive maintenance. For so long as [Judy] continues to reside in the family residence on Lexington Avenue, [Stephen] will be paying the mortgage payment, insurance, and taxes. He should also pay as maintenance the utilities incurred by [Judy] at that residence, to include gas, electric, water, basic telephone service, and cable television. At such point as [Judy] vacates the residence, either on December 31, 1997, or prior thereto if she chooses, [Stephen] should begin paying to [Judy] as maintenance the sum of \$2,000.00 per month, to continue for a total period of twelve months from the date of the judgment herein. He should continue to pay thereafter the sum of \$1,000.00 per month for a period of an additional twelve months, and the sum of \$500.00 per month for a period of twelve months thereafter, for a total of 36 months from the date of judgment.

By interlocutory order dated August 6, 1997, the trial court adopted the Commissioner's recommendations as they related to maintenance.¹

On December 1, 1997, Judy filed a motion requesting that she be granted possession of the marital home until the

¹We note that this order did not adjudicate all claims between the parties, did not contain CR 54.02 finality language, and was an interlocutory order subject to revision at any time before entry of a judgment adjudicating all claims between the parties. CR 54.02(1). We are therefore unpersuaded that, as argued by Stephen, August 6, 1997, would qualify as the "date of judgment" referred to in the Commissioner's report.

conclusion of the 1997-1998 school year. The issue was referred to the Commissioner. On December 22, 1997, the trial court entered the final decree.^{2 3} On December 30, 1997, the Commissioner filed a report recommending that Judy's request to remain in the marital home be denied. However, Judy did not vacate the marital residence by December 31, and filed exceptions to the Commissioner's report. On January 26, 1998, the trial court entered an order granting Judy thirty days to vacate the marital home from such time as she received certain funds from the division of the marital estate.

On January 6, 1998, Judy filed a motion to hold Stephen in contempt for, among other reasons, failure to begin paying maintenance commencing January 1. Also on January 6, Stephen filed a motion requesting that Judy be required to vacate the marital residence. On January 23, a hearing was held on the motions. In regard to the maintenance issue, Stephen argued that his \$2,000.00 per month maintenance obligation should not begin until Judy vacated the residence. The trial court rejected this and indicated that the obligation was to commence January 1.

²While the December 22, 1997, order further reserved child support issues, the order incorporated the trial court's August 6, 1997, order accepting the Commissioner's maintenance recommendation, and, moreover, it contained CR 54.02 finality language. Thus, the August 6, 1997, order was deemed to be re-adjudicated as of December 22, 1997. CR 54.02(2). To the extent the "date of judgment" referred to in the Commissioner's report is relevant, the applicable judgment date is December 22, 1997, not August 6, 1997, as contended by Stephen.

³On January 16, 1998, Judy filed her notice of appeal of the trial court's December 22, 1997, order. That case was docketed in this Court as Case No. 1998-CA-000156. On June 10, 1999, this Court entered an order dismissing that appeal for failure to file a brief.

However, Stephen did not start paying maintenance, and on March 3, 1998, Judy filed a motion to hold him in contempt of court for failing to pay maintenance of \$2,000.00 per month effective January 1. The motion referred to the trial court's ruling at the January 23 hearing as confirmation that Stephen's maintenance obligation was to commence on January 1. In his response, Stephen contended that he was not obliged to begin paying \$2,000.00 per month maintenance until Judy vacated the marital home.

On March 13, 1998, Judy vacated the home. Stephen paid Judy \$1,000.00 in maintenance for the second half of March, and commencing April 1 Stephen began paying Judy \$2,000.00 per month in maintenance. On June 2, Judy filed a motion requesting that the trial court rule on Stephen's maintenance obligation for the period January 1 through March 13, 1998. The motion was heard on July 17, 1998. At the hearing, the trial court ruled that Stephen was required to pay Judy \$5,000.00 in maintenance for the period January 1 through March 13, 1998. In addition, the trial court clarified that the \$2,000.00 maintenance phase was to run for twelve months, or from January 1, 1998, until December 31, 1998.

On July 22, 1998 the trial court entered an order wherein it ordered that "[t]he [\$5,000.00] maintenance which [Stephen] owes to [Judy] shall be paid within ten days." On July 31, 1998, Stephen filed a motion to alter, amend or vacate requesting that "so much of the Order as directs that he is to pay \$5,000.00 in maintenance be set aside." The motion again

argued that Stephen was never under any obligation to pay \$2,000.00 in maintenance to Judy until she moved from the marital residence. On August 7, 1998, the trial court denied the motion to alter, amend or vacate. Appeal No. 1998-CA-002067 followed.

On August 21, 1998, Stephen's motion to supersede the judgment was denied, but he did not pay the \$5,000.00 arrearage. Also, based upon the theory that commencing with his August 1998 payment, his maintenance obligation was reduced to \$1,000.00 per month, he only paid \$1,000.00 as his August maintenance. On August 18, 1998, Judy filed a motion to hold Stephen in contempt of court for failing to make these payments. A similar motion was filed on September 29, 1998. These matters were referred to the Commissioner.

On May 20, 1999, the Commissioner filed his report. In relevant part, the report stated as follows:

Concerning the maintenance issue, the Commissioner realizes that the Court has previously ruled that the \$2,000 maintenance was to commence January 1, 1998 and continue for 12 months. The Commissioner understands that has been appealed.

The Commissioner in his recommendation of June 11, 1997, intended for [Stephen] to pay mortgage, insurance, taxes, and utilities on the house as maintenance since [Judy] was living there.

It was also the Commissioner's intent that when [Judy] vacated the premises on December 31, 1997 or prior thereto if she chose to do so, then [Stephen] would pay \$2,000 per month maintenance for 12 months, then \$1,000 for 12 months, then \$500 per month for 12 months.

All would have gone smoothly if [Judy] had moved out on December 31, 1997. For

whatever reason, she did not move out until March 15, 1998.

It is the Commissioner's opinion that [Stephen] should not have been liable for the \$2,000 per month maintenance until she moved out and only until December 31, 1998.

Following this reasoning [Stephen] would owe \$1,000 for March 1998 and \$2,000 per month for April through December, [sic] 1998. [Stephen] would owe \$1,000 per month for January through December 1999 and \$500 per month for January through December 2000.

Commissioner is aware of [Stephen's counsel's] argument that the \$2,000 should only be paid for 12 months from the date of judgment of August 1997. But, that language is in conflict with and makes no sense when coupled with language that [Judy] had until December 31, 1997 to move and then would receive maintenance for 36 months.

Stephen filed exceptions to the report insofar as it recommended that he was required to pay maintenance of \$2,000.00 per month through December 31, 1998. On June 14, 1999, the trial court entered an order adopting the Commissioner's report with the exception that the trial court reiterated its ruling that Stephen owed the \$5,000.00 arrearage for maintenance from January 1, 1998, to March 13, 1998. Stephen's motion to alter, amend or vacate that order was also denied. Appeal No. 1999-CA-001707 followed.

Stephen argues that "[t]he trial court erred in modifying an award of lump sum maintenance without hearing and presentation of evidence." In summary, Stephen argues that the trial court's August 1997 order awarded maintenance at the rate of \$2,000.00 per month commencing whenever Judy moved out of the marital residence until one year from the date of the entry of

the judgment awarding maintenance, then at the rate of \$1,000.00 per month for an additional twelve months, and then at the rate of \$500.00 per month for an additional twelve months. Stephen argues that the maintenance award was a "lump sum" maintenance award subject to the modification restrictions of Dame v. Dame.⁴ Judy, on the other hand, argues that there was no modification at all, and that the trial court's subsequent orders concerning maintenance were merely clarifications of previous orders, and were consistent with, its August 1997 maintenance award.⁵

The following sentence from the June 1997 Commissioner's report, which attempted to set forth Stephen's maintenance obligation, has led to the disagreement:

At such point as [Judy] vacates the residence, either on December 31, 1997, or prior thereto if she chooses, [Stephen] should begin paying to [Judy] as maintenance the sum of \$2,000.00 per month, to continue for a total period of twelve months from the date of the judgment herein.

Because Judy moved out after December 31, 1997, and that contingency was not specifically addressed, there is an ambiguity. Moreover, depending upon the "date of judgment," the wording "total period of twelve months" may conflict with the

⁴Ky., 628 S.W.2d 625 (1982).

⁵We note an inconsistency in Stephen's Dame argument. On the one hand Stephen argues that the trial court's maintenance award is a fixed lump sum maintenance award subject to the modification restrictions of Dame. However, at the same time, Stephen argues that the amount of the award could vary depending upon when Judy moved out of the residence and depending upon the "date of the judgment." In summary, if Stephen's interpretation of the maintenance award is accepted, the maintenance award is not a fixed lump sum maintenance award subject to the modification limitations of Dame.

wording "twelve months from the date of the judgment." Since Stephen interprets the "date of judgment" to be August 6, 1997, there is a conflict under his interpretation.

The trial court has interpreted its previous order, and this interpretation is, for purposes of our review, a finding of fact as to what the trial court originally intended the order to mean. We may not reverse a trial court's finding of fact unless that finding is clearly erroneous.⁶ In this case, in particular, deference to the trial court's finding on the issue is appropriate because the trial court is interpreting and explaining its own ambiguous statements in originally ordering Stephen to pay maintenance to Judy. Under the trial court's interpretation of the order, maintenance was to begin no later than January 1, 1998, and was to be at the rate of \$2,000.00 for twelve months, then \$1,000.00 for twelve months, and then \$500.00 for twelve months for a total of \$42,000.00 over 36 months. We cannot say that this interpretation is clearly erroneous.

Stephen was to begin paying maintenance "[a]t such point as [Judy] vacates the residence, either on December 31, 1997, or prior thereto if she chooses" [emphasis added]. This wording did not contemplate that Judy would remain in the residence beyond December 31, 1997, and there was no explicit provision as to what would occur if she moved out later than that date. The interpretation argued by Stephen completely ignores this problem. Given the "either/or" construction of the phrase, i.e., Stephen's obligation begins either on December 31, or it

⁶CR 52.01.

begins prior thereto, the trial court was not clearly erroneous in interpreting its order to require Stephen's maintenance obligation to begin on January 1.

The second possible ambiguity concerns the date the \$2,000.00 phase of the maintenance obligation ends. According to the sentence in question in the original Commissioner's report, the obligation was "to continue for a total period of twelve months from the date of the judgment herein." Stephen interprets the "date of judgment" as August 6, 1997. However, since the August 6, 1997, order was interlocutory, it is deemed to have been re-adjudicated as final on December 22, 1997, the date of the final decree.⁷ That being the case, the ambiguity is resolved, since "twelve months from the date of the judgment" coincides with "a total of twelve months."⁸⁹

For the foregoing reasons, the orders appealed from in this matter are affirmed, whereby Stephen's maintenance obligation to Judy is a total of \$42,000.00.

ALL CONCUR.

⁷See Footnotes 1 and 2. CR 54.02.

⁸With the exception of a nominal 9 day deviation.

⁹In addition to the above, the Commissioner, who drafted the sentence, stated that he intended the maintenance phase of \$2,000 per month to run until December 31, 1998. The trial court interpreted the Commissioner's recommendation likewise, and this was a rational interpretation of the wording. Hence, even if August 6, 1997, had been the "date of judgment," we cannot say that the trial court was clearly erroneous in concluding that the \$2,000.00 phase was to continue until December 31, 1998, rather than until August 6, 1998.

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