

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-003201-MR

LATCHAIAH CHIRUMAMILLA

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY L. COREY, JUDGE
ACTION NO. 97-FC-008430

CHANDRIKA CHIRUMAMILLA

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; BARBER and COMBS, Judges.

BARBER, JUDGE. Latchaiah Chirumamilla appeals from an order of the Jefferson Circuit court awarding his former wife, Chandrika Chirumamilla, maintenance in the amount of \$2,500 per month for five years. After reviewing the record, the applicable law, and the arguments of counsel, we affirm.

Both parties originally were natives of India. Chandrika immigrated to the United States with her family and had lived in Florida for approximately 25 years when her parents decided to inquire about arranging a marriage with an Indian native according to Indian customs. Her uncle placed an advertisement in an Indian newspaper to which Latchaiah

responded. Latchaiah had several friends living in the United States at the time and was intrigued about marrying an American resident and coming to this country. At that time, Latchaiah earned approximately \$600 per month as a physician practicing general family medicine part-time while studying for the examinations needed to obtain a further specialty.

The couple met in March 1992 in India by arrangement and were married shortly thereafter in April 1992 in Vijayawada, India. In December 1992, Latchaiah came to Florida where the couple lived with Chandrika's parents while he attempted to obtain a license to practice medicine in the United States. After passing the initial medical board examination in June 1994, Latchaiah obtained a three-year residency position at the University of Louisville Medical School in July 1994. Between December 1992 and July 1994, Latchaiah was not employed and the couple's only income was from Chandrika's employment as a data entry clerk earning approximately \$29,700 per year. She also was attending Florida International University as a part-time student.

In July 1994, the couple moved to Louisville, where Latchaiah earned \$30,000 as a resident at the University of Louisville. Towards the end of his second year of residency in April 1996, Latchaiah also began working at the Veterans Affairs Medical Center earning approximately \$20,000 per year. While Latchaiah was completing his residency, Chandrika worked part-time earning somewhat less than she had in Florida. In 1994, 1995, and 1996, Chandrika earned \$10,787, \$13,441, and \$20,031,

respectively. On June 30, 1997, Latchaiah completed his three-year residency program and began practicing medicine through a placement agency. In 1997, Latchaiah earned approximately \$67,000, while Chandrika earned \$23,646. As a self-employed physician, Latchaiah received approximately \$12,222 per month on a contract basis with a gross yearly income in excess of \$140,000.

The parties separated in August 1997. After the separation, Chandrika continued to work part-time as a data entry clerk earning \$8.48 per hour and attending the University of Louisville with an anticipated graduation in December 1998 with a bachelor's degree in economics. In November 1997, Latchaiah filed a petition for divorce. In December 1997, Chandrika filed a motion for temporary maintenance, but due to scheduling difficulties, there was no ruling on the motion prior to the final divorce hearing on June 25, 1998.

On September 11, 1998, the trial court entered a judgment and decree containing findings of fact and conclusions of law. The court found that the couple lived with Chandrika's parents shortly after their marriage until they went to Louisville in June 1994. During this period, Chandrika provided the couple's sole income. After their separation, her gross earnings were \$2,360 per month and average net earnings were \$1,706 per month. Chandrika estimated her living expenses were \$1,727 per month and indicated that she would have been spending in excess of \$2,100 per month had the couple remained married. She testified that her income barely covered necessary living

expenses, that she had to incur some debt, and that she was unable to afford furniture for her apartment.

The court divided the marital estate equally awarding Latchaiah \$20,372.10 and Chandrika \$19,837.39 in assets, which included the vehicles then in each party's possession. The court stated that Chandrika had been required to incur debt of \$2,900 and use \$1,000 of marital funds on living expenses following the parties' separation. It noted that she had lived frugally and had been unable to purchase appropriate furnishings following the separation. The court found that Chandrika's earnings were insufficient to meet her basic needs and the property awarded her in the distribution would not increase her income to a level sufficient to meet her reasonable needs. Applying the factors set out in KRS 403.200(2), the court held that Chandrika was entitled to a permanent maintenance award of \$2,500 per month for five years as of June 25, 1998. The trial court referred to Van Bussum v. Van Bussum, Ky. App., 728 S.W.2d 538 (1997), in weighing Chandrika's contribution to Latchaiah's ability to practice medicine in this country as a significant factor in determining the maintenance award.

On September 22, 1998, Latchaiah filed a CR 59.05 motion to alter, amend or vacate challenging the property distribution and the maintenance award. Chandrika filed a motion pursuant to CR 68 for payment of a portion of her attorney fees and costs based on the rejection of her proposed settlement. Following a hearing on October 27, 1998 the trial court denied both motions. This appeal followed.

In deciding whether to award maintenance, a trial court must conduct a two-stage evaluation in each particular case based on the requirements set out in KRS 403.200. First, the court must determine whether maintenance is justified in the first instance. This threshold finding involves a two-part test requiring the party seeking maintenance to show that she(he) lacks sufficient property to provide for her(his) reasonable needs, and that she(he) is unable to support herself through appropriate employment. KRS 403.200(1)(a) and (b); Dotson v. Dotson, Ky., 864 S.W.2d 900 (1993); Russell v. Russell, Ky. App., 878 S.W.2d 24 (1994). The court may look to the couple's standard of living during the marriage in determining whether a party has sufficient property to provide for her(his) reasonable needs and is unable to support herself(himself) through appropriate employment. Weldon v. Weldon, Ky. App., 957 S.W.2d 283, 285 (1997); Russell, 878 S.W.2d at 26; Leitsch v. Leitsch, Ky. App., 839 S.W.2d 287, 289 (1992). The court may also consider the disparity in the financial condition of each party. Leveridge v. Leveridge, Ky., 997 S.W.2d 1 (1999); Atwood v. Atwood, Ky. App., 643 S.W.2d 263 (1982); Beckner v. Beckner, Ky. App., 903 S.W.2d 528, 530 (1995).

The second stage of the maintenance decision involves the amount and duration of any award. KRS 403.200(2) sets out the various relevant factors on this issue as follows:

- (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.

The trial court has broad discretion in deciding whether to award maintenance in the first instance, as well as in determining the amount and duration of a maintenance award. Leveridge, 997 S.W.2d at 2; Gentry v. Gentry, Ky., 798 S.W.2d 928, 937 (1990); Beckner, 903 S.W.2d at 530; Clark v. Clark, Ky. App., 782 S.W.2d 56, 60 (1990). In describing the appropriate standard of review for maintenance decisions, the Kentucky Supreme Court stated in Perrine v. Christine, Ky., 833 S.W.2d 825 (1992):

Under this statute [KRS 403.200], the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts. In order to reverse the trial court's decision, a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion.

Id. at 826.

In the current case, Latchaiah challenges the trial court's award of maintenance to Chandrika of \$2,500 per month for five years. First, he argues that the court should not have awarded any maintenance because Chandrika did not satisfy KRS 403.200(1). He maintains that she is capable of producing enough income to meet her reasonable needs. He asserts that Chandrika testified that she was earning \$1,849.04 per month and that her monthly expenses were \$1,727. He also notes that she was scheduled to receive her college degree in December 1998. Thus, Latchaiah concludes that the trial court's finding that Chandrika had established the threshold requirement for an award of maintenance was clearly erroneous.

The trial court found that Chandrika had net earnings of \$1,706.80 per month based on a May 15, 1998, paycheck showing year-to-date gross earnings of \$10,623.65 and net earnings of \$6,827.20. Latchaiah contends that the trial court's finding is clearly erroneous. A finding of fact is not clearly erroneous if it is supported by substantial evidence. Owens-Corning Fiberglas Corp. v. Golightly, Ky., 976 S.W.2d 409, 414 (1998); Janakakis-Kostun v. Janakakis, Ky. App., 6 S.W.3d 843, 852 (1999); CR 52.01. Substantial evidence means evidence of probative value and substance sufficient to induce conviction in the minds of reasonable men. Id. This finding was supported by a copy of the paycheck admitted at trial during Chandrika's testimony. While there was some initial confusion at the trial about Chandrika's earnings, Latchaiah's counsel conceded that his calculation of \$1,849.04 was incorrect and the correct amount based on the

documentation was \$1,706.80. The trial court's finding on this issue is supported by substantial evidence and counsel's continued objection on appeal is without merit.

In addition to the finding that Chandrika's monthly expenses of \$1,727 exceeded her net monthly earnings of \$1,706, the trial court also found that she has been unable to purchase necessary items such as furniture and has incurred some debt for living expenses. At trial, Latchaiah stipulated that he could afford to pay the maintenance amount sought by Chandrika, and he did not dispute that he had been earning approximately \$12,222 since September 1997 with a projected potential annual gross income of \$140,000 subject to a 40% reduction for federal and state taxes. Chandrika also testified that if the parties had not separated, she anticipated spending in excess of \$2,100 per month. In addition, Chandrika received only \$19,837, including an automobile, in the property distribution. Given these facts, we cannot say that Chandrika did not satisfy her burden of establishing that she did not have sufficient property or income to provide for her reasonable needs and support herself through appropriate employment according to the couple's standard of living. The trial court's finding that she established the threshold requirements of KRS 403.200(1) was supported by substantial evidence and thus, not clearly erroneous.

Latchaiah also contends that the trial court erred in determining the amount and duration of the maintenance award. He notes that Chandrika was scheduled to obtain a college degree in economics in December 1998. Again, he contends that her earnings

are sufficient to cover her reasonable needs. Also, he notes that the couple was married only five- and one-half years. Latchaiah argues that the trial court improperly relied on Van Bussum.

In Van Bussum, the parties married after the husband's first year in medical school. The wife worked during the first two years of the marriage but not during the fourth year of the husband's medical school or the three years of his residency. A few weeks after completing his residency and starting a private practice, the couple separated. The trial court awarded the wife maintenance of \$650 per month for five years. The appellate court found this award grossly insufficient stating that the wife was entitled to enjoy some benefit from the medical degree her contribution as breadwinner, homemaker, and mother, while the husband pursued his medical degree. 728 S.W.2d at 539. The court remanded the case and directed the trial court to increase the amount of maintenance to a sum that would reflect the wife's share in "the standard of living established during the marriage by the attainment of the professional degree and license'." Id. (quoting Lovett v. Lovett, Ky., 688 S.W.2d 329, 333 (1985)).

While there are some factual differences between our situation and Van Bussum, we believe that the legal principle espoused therein concerning the right of a spouse to "enjoy" some benefit from the future rewards of the other spouse's professional, i.e. medical license, is applicable to the current case. The fact that Dr. Chirumamilla had obtained a medical license in India prior to marrying Chandrika and coming to the

United States does not render the Van Bussman case inapplicable. Latchaiah was not able to utilize his Indian license to practice medicine in this country. Latchaiah stipulated at trial that Chandrika was the sole wage earner for the first year and a half that he was in this country until he obtained a residency position at the University of Louisville. She also continued to contribute to the marriage financially working part-time throughout her husband's three-year residency. As in Van Bussum, the parties separated shortly after Latchaiah started private practice at a substantially higher level of earnings than he enjoyed during his residency program.

In Lovett v. Lovett, Ky., 688 S.W.2d 329 (1985), the court discussed the definition of the word "established" appearing in KRS 403.200 with respect to the standard of living and maintenance involving a spouse who has a professional degree. The court held that the husband's much higher income received following receipt of his medical license and the year after the couple's separation was relevant in determining the couple's standard of living established during the marriage. Id. At 333. It stated, "It is the holding of this Court that a professional degree and a license to practice are relevant factors to be considered by the trial court in its determination of the standard of living established during the marriage, both as this standard relates to the ability of the nonprofessional spouse to support himself/herself and as it relates to the amount and period of time of the maintenance." Id. But see Schmitz v. Schmitz, Ky. App., 801 S.W.2d 333 (1990) (affirming denial of

maintenance where parties still earning similar salaries at time of separation and while husband still in internship program for medical license).

The evidence indicated that Latchaiah began his private medical practice just one month following the parties' separation earning nearly two times more than he did the year before (\$140,000 versus \$67,000). His projected income also was approximately five times greater than Chandrika's. There was evidence that Chandrika had contributed approximately 40% of the couple's income during the marriage and was the sole wage earner during the first year and a half. While Latchaiah had earned a medical degree and practiced for a few years in India, his income and potential future income undoubtedly was much greater in this country. While Chandrika was scheduled to obtain her college economics degree in December 1998, there was no evidence of her potential or expected income or that her earnings would increase substantially in the near future because of the degree. In its opinion, the trial court treated Chandrika's contribution to Latchaiah's ability to practice medicine in the United States with an extremely enhanced earning potential as an important factor and did not consider a maintenance award of a few months appropriate even though she would be receiving a college diploma in the near future. It also considered the duration of the marriage of nearly six years in determining the five-year term for the maintenance award. Despite Latchaiah's protestations, this durational term was not unreasonable. See, e.g., Van Bussum, supra (six-year marriage and five-year maintenance

award); Lovett, supra (fourteen-year marriage and ten-year maintenance award); Clark v. Clark, (twenty-year marriage and twenty-year maintenance award); Carter v. Carter, Ky. App., 656 S.W.2d 257 (1983) (wife entitled to maintenance following marriage of two years). Latchaiah stipulated that he was financially able to pay the amount of maintenance requested by Chandrika. The trial court properly considered all of the factors delineated in KRS 403.200(2), and we find neither clear error in its factual findings, nor an abuse of discretion in its decision on the amount and duration of the award.

For the foregoing reasons, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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