

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002624-MR

MICHAEL DANIEL PETERS

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE T. STEVEN BLAND, JUDGE
ACTION NO. 95-CI-00543

KOREENNA JANETH BUBAR (FORMERLY PETERS)

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, EMBERTON AND HUDDLESTON, JUDGES.

BUCKINGHAM, JUDGE: Michael Daniel Peters appeals from an order of the Hardin Circuit Court adjudging that his maintenance obligation to Koreenna Janeth Bubar (formerly Peters) did not terminate upon her remarriage. We affirm.

The parties were married on February 14, 1986. Michael filed a petition to dissolve the marriage on April 5, 1995. On July 12, 1995, the trial court entered an interlocutory decree dissolving the marriage, reserving all other issues until further orders of the court.

On September 24, 1996, the Domestic Relations Commissioner (DRC) entered his report recommending, among other

things, that Michael be required to pay Koreenna maintenance in the sum of \$350.00 per month for a one-year period beginning June 1, 1996. On November 20, 1996, the trial court entered an order accepting the DRC's recommendation. Thereafter, Michael failed to comply with the monthly maintenance obligation.

Koreenna remarried on December 31, 1996. On February 27, 1997, the parties entered into an agreed order in which Michael agreed to pay the full amount of his maintenance obligation as established in the November 20, 1996, order in weekly payments of \$80.77. Once again, Michael failed to make his maintenance payments.

On May 14, 1997, following motions on the issue by Koreenna, the DRC rendered a report which stated, in relevant part, as follows:

The Petitioner was required to pay \$350.00 per month from June 1, 1996 through May 31, 1997 as a lump sum award of maintenance by the Judgment of this Court entered on November 20, 1996. The Petitioner failed to make the monthly maintenance payments and the parties entered into an Agreed Order on February 27, 1997. The Petitioner agreed to pay this award of maintenance to the Respondent at the rate of \$80.77 per week with the first payment due on February 14, 1997 until paid in full. The Petitioner has failed to pay the weekly maintenance payments and \$969.24 has accrued through May 15, 1997. This Commissioner recommends that the Respondent be awarded a judgment against the Petitioner in the amount of \$969.24 as past due maintenance through May 15, 1997.

The Petitioner still owes maintenance to the Respondent in the amount of \$3,230.80 (40 wks x 80.77 = \$3,230.80). He requests that the Court postpone the payment of the maintenance until such time as he becomes re-employed. This Commissioner recommends that the Petitioner's weekly maintenance payments be

suspended for 12 weeks from May 16, 1997 to August 8, 1997, at which time the Petitioner's weekly maintenance payments shall resume and continue until he pays for a total of 52 weeks.

The trial court entered an order on May 28, 1997, accepting the DRC's recommendation.

The record indicates that following the abatement period, Michael again failed to make maintenance payments to Koreenna. After considering several motions, the DRC rendered yet another report on August 4, 1999, addressing various issues. In regard to maintenance, the DRC stated as follows:

Koreenna was awarded maintenance of \$350 per month from Michael for the period of June 1, 1996 through May 31, 1997. This award totals \$4,200. The parties entered into an Agreed Order on February 27, 1997, whereby Michael agreed to pay this award of maintenance at the rate of \$80.77 per week with the first payment due on February 14, 1997 until paid in full. Through May 15, 1997, Michael owed \$1,130.78 in maintenance. (14 weeks x \$80.77 = \$1,130.78). A judgment was entered against Michael for maintenance arrearage of \$969.24 through May 15, 1997. This Commissioner finds the balance due on the lump sum maintenance is \$3,069.26. (38 weeks x \$80.77 = \$3,069.26). No proof was tendered by Michael showing he made the remaining weekly payments. Therefore, this Commissioner recommends that a judgment be awarded against Michael in favor of Koreenna in the amount of \$3,069.26 for maintenance arrearage.

Michael filed exceptions to the DRC's maintenance recommendations. He argued that "approximately six months" into the original one-year maintenance period, i.e., the June 1, 1996, through May 31, 1997 period, Koreenna had remarried, and that

pursuant to KRS¹ 403.250(2), he was not obligated to pay maintenance for the period following her remarriage. On September 28, 1999, the trial court entered an order overruling Michael's exceptions and accepting the DRC's recommendation. The court awarded a judgment in favor of Koreenna for \$3,069.26, representing Michael's unpaid maintenance obligation. This appeal followed.

The only argument raised by Michael on appeal is that the trial court erred when it awarded Koreenna a judgment for maintenance arrearage for the maintenance which he failed to pay applicable to the period of time following Koreenna's remarriage. Michael bases his argument exclusively on the provisions of KRS 403.250(2), which state that "[u]nless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance." Michael contends that in the DRC's September 24, 1996, report, later adopted by the trial court, which established his maintenance obligation, there was no express provision that maintenance would continue following Koreenna's remarriage. He therefore asserts that when she remarried, his maintenance obligation ceased.

Conspicuously absent from Michael's argument is any acknowledgment of the February 27, 1997, agreed order. The agreed order states, in relevant part, as follows:

¹ Kentucky Revised Statutes.

[Michael] shall satisfy his spousal maintenance obligation as set forth in the final Order of this Court by making weekly payments of \$80.77 with the first payment being due on Friday, February 14, 1997 and a like payments [sic] being made on each Friday thereafter until the full amount of the maintenance obligation is paid in full. It is agreed this payment shall be made by direct deposit from [Michael's] checking account to [Koreenna's] checking account.

This agreed order was executed two months after Koreenna's remarriage. Pursuant to the agreement, Michael agreed to pay his maintenance obligation in full as set forth within the original order establishing the maintenance obligation.

Inasmuch as Koreenna was already remarried at the time of the agreed order, it follows that Michael's agreement to make such payments was an agreement to make maintenance payments subsequent to Koreenna's remarriage.

At any rate, case authority solidly supports Koreenna's position. A maintenance award in a fixed amount payable in installments is not modifiable absent extraordinary circumstances. Low v. Low, Ky., 777 S.W.2d 936 (1989); Dame v. Dame, Ky., 628 S.W.2d 625 (1982). In John v. John, Ky. App., 893 S.W.2d 373 (1995), this court held that a lump sum maintenance award made pursuant to a settlement agreement is not terminable upon the obligee's remarriage. In light of the fixed-sum nature of the maintenance obligation in this case, along with Michael's ratification, following Koreenna's remarriage, of the original obligation in the February 27, 1997, agreed order, Michael's argument that he should be relieved of his maintenance obligation following Koreenna's remarriage is unpersuasive.

Michael's reliance on Clark v. Clark, Ky. App., 601 S.W.2d 614 (1980), is also unpersuasive as the maintenance provision in that case was pursuant to a court order only and did not involve an agreement in the nature of the parties' February 27, 1997, agreed order. The maintenance provision in the February 27, 1997, agreed order is enforceable, and the parties therein agreed on a lump sum, payable weekly, consistent with the original maintenance award.

The order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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