

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002389-MR

DAVID L. STEELE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ELEANORE GARBER, JUDGE
ACTION NO. 87-FC-005441

PAMELA W. STEELE

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE. David L. Steele (David) appeals from the opinion and order entered by the Jefferson Family Court on May 15, 1999, which ordered him to pay maintenance to his former spouse, Pamela W. Steele (Pamela). We affirm.

The parties hereto were married on August 17, 1980. Three children were born during the marriage; namely, Kelly Ray Steele, born November 20, 1981, Sarah Ann Steele, born October 4, 1987, and Andrew David Steele, born January 15, 1997. The parties separated on July 21, 1997, and Pamela filed her verified petition for dissolution of marriage on July 24, 1997. During the pendency of the action, David was ordered to pay child

support in the amount of \$1,384.17 per month, but Pamela's motion for temporary maintenance had been denied by the court. A decree of dissolution of marriage was entered on March 3, 1998, said decree reserving all issues as to property and debt division, custody and visitation, maintenance, and attorney fees, etc., to be determined following a trial. That hearing took place on April 28, 1998. Based upon the testimony and evidence presented that day, as well as pre-trial compliance memoranda filed by the parties, the Jefferson Family Court entered its findings of fact, conclusions of law and amended decree on May 18, 1998. In that maintenance is the only issue on appeal to this Court, we will limit our review of the family court's order to that issue.

In the May 18, 1998 amended decree, the family court found that Pamela had been employed part-time as a nutrition consultant for ten years earning approximately \$1,431.04 net per month. This was based upon wages of \$16.00 per hour for a 26 hour work week. David was found to be employed as a pharmacist earning approximately \$4,316.67 net per month. Pamela was to receive \$49,224.19 as her share in the equity from the marital residence and the remaining marital was to be divided equally. Qualified Domestic Relations Orders (QDRO) were to be entered dividing the retirement and pension funds of the parties. As to the issue of maintenance, the family court made the following findings:

10. That the Petitioner lacks sufficient property to provide for her reasonable needs and is unable to support herself through appropriate employment at this time.

Pursuant to KRS 403.200, the Court may grant maintenance to either spouse if it first finds that the spouse seeking maintenance:

a. lacks sufficient property, including property apportioned to him, to provide for his reasonable needs; and

b. is unable to support himself through appropriate employment...

If this Court makes the above two findings, then the statute goes on to state a number of factors that the Court must consider in determining the amount and duration of maintenance. Among other things, these factors include the financial resources of both parties, the standard of living established during the marriage, the duration of the marriage, the age, physical and emotional condition of the spouses and a requesting spouse's need for education and training to become self-sufficient.

Case law established that the above statutory framework sets out a relative standard. Casper vs. Casper, Ky., 510 SW 2d 253 (1974).

Citing the Casper decision, the court, in Combs vs. Combs, Ky. App., 662 SW 2d 679 (1981), at Page 680, states:

There mere fact that the wife can eke out a living is not sufficient to deny maintenance...the duration of maintenance must have a direct relationship to two factors: (1) the period over which the needs exist, and (2) the ability to pay.

The Court is directed to award maintenance in amounts an (sic) for periods of time as the Court deems just. In the case of Frost vs. Frost, Ky. App., 581 SW 2d 582 (1979), the court states at page 585:

In instances where one party is not, at the time of the dissolution, self-supporting, it is proper for the Trial Court to take evidence as to that person's prospects for becoming economically

independent, and also as to how long it is likely to be before such prospects are realized. Where it appears that a maintenance award should be of limited duration, it would be much better policy for the Trial Court to treat any fixed time span arrived at as a mere presumption of a reasonable period for the achievement of economic independence, which may be overcome upon a showing by either party. Nothing we have said shall be construed as removing from the party receiving maintenance the duty of making every effort to become self-supporting.

11. That the Respondent has the financial ability to provide maintenance to the Petitioner. The Court has previously found that the Petitioner's gross income is approximately \$1,431.04 for what the court has deemed to be a 26 hour week. When the child support received from the Respondent in the amount of \$1,384.17 is added to this figure the Petitioner is left with disposable income in the amount of \$2,815.21. The court has found that the Respondent has an approximate gross (sic - actually net income) income of \$4,316.67 and when the child support obligation is deducted from this figure it leaves him a disposable income of \$2,932.50 and therefore, the Court Orders that he pay the Petitioner maintenance in the amount of \$100.00 until the child support obligation of the 1st child ceases. When this obligation ceases, the Respondent shall pay \$500.00 representing maintenance until the child support obligation on the youngest child is extinguished at which time the Respondent's maintenance obligation shall also cease. Likewise, the Petitioner's remarriage or Petitioner's death, shall also extinguish the Respondent's Maintenance obligation.

(Family Court Order entered May 18, 198, pages 4-7).

David filed timely motions pursuant to CR 52.02, CR 52.04 and CR 59.05, requesting additional and/or specific findings of fact and to alter, amend or vacate the May 18, 1998,

decree regarding the division of marital property, the amount and duration of the maintenance award, the calculation of child support, and restoration of non-marital property. The family court thereafter entered its opinion and order on June 8, 1999, denying David's motions on these issues.

Specifically, as it relates to the maintenance award, Judge James M. Green held:

Pertaining to the issue of maintenance, the Court found that Ms. Steele met the statutory prerequisites for an award of maintenance, and Mr. Steele had the financial ability to pay said maintenance. The Court awarded maintenance of \$100.00 per month until the child support obligation of the first child ceases. At that time, the maintenance will increase to \$500 per month until the child support obligation for the youngest child is extinguished at which time the maintenance obligation shall also cease. In Perrine v. Christine, 833 S.W.2d 825 (1992), it is stated quite clearly that "the determination of questions regarding maintenance is a matter which has traditionally been delegated to the sound and broad discretion of the trial court." Contrary to Mr. Steele's allegation that maintenance cannot be modified, KRS 403.250 describes the process whereby maintenance is modifiable. Further, Mr. Steele can rest assured that if cohabitation becomes a factor he has the ability to move for modification of maintenance. According to Combs v. Combs, 787 S.W.2d (1990), maintenance can be modified based on this factor. Combs states "we believe that a maintenance recipient's cohabitation can render continued maintenance 'unconscionable' if the nature of the cohabitation constitutes a new 'financial resource' as contemplated by KRS 403.200(2)(a). Thus, Mr. Steele has recourse should the terms of the maintenance obligation need modification.

(Family Court Order entered June 8, 1999, pages 3-4). This appeal followed.

As previously stated, the only issue raised on appeal by David is the amount and duration of maintenance ordered by the family court. David contends that the family court's order is "unsupported by substantial evidence" and that it "clearly abused its discretion in awarding maintenance...." Though David concedes that the amount and duration of maintenance is within the sound discretion of the trial court (citing Russell v. Russell, Ky. App., 878 S.W.2d 24, 26 (1994)), he argues that the family court abused that discretion by failing to follow the mandate of KRS 403.200(2). We disagree.

In the recent case of Leviridge v. Leviridge, Ky., 997 S.W.2d 1 (1999), our Supreme Court upheld a maintenance award for 12 years following a marriage of a nineteen year duration. The Court, again, emphasized that "[t]he decision to grant or deny a maintenance award lies within a trial court's sound discretion as it applies the governing factors of KRS 403.200 to the parties' circumstances upon dissolution of marriage." Leviridge, 997 S.W.2d at 2. In the case before us, the trial court heard testimony from the parties and several other witnesses concerning the financial resources accumulated during the marriage and the parties' economic and employment status and opportunities. Based upon the information presented, the family court judge entered his findings of fact, conclusions of law and judgment relative to the dissolution of marriage, including the award of maintenance.

In the May 18, 1998, order, the family court specifically set forth the factors the court must consider pursuant to KRS 403.200. Although the court did not list each

factor individually and then make detailed findings as to each factor, it is clear that the court considered them as required by statutory and case law. We do not believe, nor has David cited us to any authority which would support such a position that the trial court must make specific findings as to each statutory factor.

"In order to reverse the trial court's decision [regarding maintenance], a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion." Perrine v. Christine, Ky., 833 S.W.2d 825, 826 (1992). Considering the non-marital and marital property assigned to Pamela, her monthly income, and the standard of living established by the parties during their marriage, we find no abuse of discretion by the trial court in awarding maintenance in this matter. "As an appellate court, neither the Court of Appeals nor this Court is authorized to substitute its own judgment for that of the trial court on the weight of the evidence, where the trial court's decision is supported by substantial evidence. Combs v. Combs, Ky., 787 S.W.2d 260, 262 (1990). Despite David's arguments to the contrary, the evidence cited by the family court in its May 18, 1998, findings of fact and conclusions of law supports its maintenance award.

The opinion and order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Victor E. Tackett, Jr.
Louisville, KY

BRIEF FOR APPELLEE:

Grant M. Helman
Louisville, KY

