

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001471-MR

ROBERT LYNN YOUNG

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE HENRY GRIFFIN, JUDGE  
ACTION NO. 99-CI-00909

ALISA DEVINS YOUNG

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Robert Lynn Young ("Robert") appeals from a decree of dissolution of marriage of the Daviess Circuit Court. He contests the court's award of maintenance to his ex-wife, Alisa Devins Young ("Alisa"). We affirm.

Robert and Alisa were married in 1978. The marriage produced three children, each of whom was a minor at the time of the instant action. On July 29, 1999, Alisa filed a petition in Daviess Circuit Court seeking to dissolve the marriage.

Proof on the matter was heard by the Domestic Commissioner on October 26, 1999. After taking proof, on November 3, 1999 the commissioner rendered his report which

included recommended findings of fact and conclusions of law. The report did not recommend an award of maintenance as neither party had sought it.

Prior to the entry of the decree of dissolution, Robert filed a petition in bankruptcy court seeking a Chapter 7 discharge of his debts. The discharge was rendered on April 19, 2000.

After learning of the discharge, Alisa filed a motion seeking maintenance. As a basis for the motion, she argued that the discharge had the dual effect of freeing Robert's finances while placing the entire burden for the marital debts on her. Robert claimed an inability to pay maintenance, even after filing bankruptcy.

Upon considering the motion, the commissioner rendered a recommendation on March 14, 2000, that Alisa was entitled to maintenance from Robert in the amount of \$200 per month for five years, or until certain contingencies occurred (co-habitation, remarriage, or death). The matter then went before the circuit court, which rendered a decree of dissolution of marriage on May 17, 2000. The decree adopted the commissioner's recommendation on maintenance. This appeal followed.

Robert now argues that the circuit court erred in awarding Alisa maintenance. He contends that he is simply unable to pay maintenance since his month living expenses of approximately \$1,340 exceed his monthly net income of \$740. He further argues that if Alisa would file bankruptcy, she would be able to provide for her reasonable needs and those of the

parties' three children. In sum, he maintains that the circuit court did not properly apply the requirements of the maintenance statute, KRS 403.200, and that as such the matter should be reversed and remanded.

We have closely studied the record and the law, and find no error. KRS 403.200 provides 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.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(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.

Of these factors, Robert focuses on (2) (a), i.e., Alisa's financial resources, and (2) (f), i.e., Robert's ability to meet his needs while paying maintenance. With respect to (2) (a), he notes that if Alisa would file bankruptcy, her financial status would be improved. He suggests that her refusal to seek a discharge of her debts should bar her from seeking maintenance from Robert. Robert has not cited any case law or statutory law in support of this assertion, and our own research has uncovered none. We find no rational basis for concluding that a party requesting maintenance must seek a discharge of her debts prior to moving for maintenance, and do not find Robert's argument on this issue persuasive.

As to Robert's argument that he lacks the financial means to pay maintenance, the record provides conflicting evidence which could support either party depending on its interpretation. Such is often the case in dissolution proceedings. Robert claims a net monthly income of \$740 per month, whereas Alisa claims that his net monthly income is \$2,078. Robert's calculation includes a deduction for repayment of certain obligations including child support and repayment of a 401(k) loan, whereas Alisa's does not. Our duty is not to examine these financial calculations de novo, but rather to

determine whether the trial judge abused his discretion in making the award. Priddy v. Priddy, 504 S.W.2d 711 (Ky. 1974). We find no such abuse. The trial judge rendered findings of fact on the parties' finances, which included by reference the findings of fact set forth in the commissioner's reports. Those findings are based on substantial evidence. In applying the findings to law, the circuit court reached a result which is in conformity with KRS 403.200. Nothing more is required.

For the foregoing reasons, we affirm the decree of dissolution of marriage of the Daviess Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gary M. Gibbs  
Henderson, KY

BRIEF FOR APPELLEE:

Diane Morris  
Owensboro, KY