

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001991-MR

PATRICIA K. KISSINGER

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE JERRY D. WINCHESTER, JUDGE
ACTION NO. 98-CI-00649

KEITH A. KISSINGER

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, EMBERTON, KNOPF, JUDGES.

BARBER, JUDGE: Patricia K. Kissinger ("Patricia") appeals from a divorce decree awarding her \$300.00 per month in maintenance for a period of five years. Patricia contends that the maintenance award is insufficient and that the trial court abused its discretion by not awarding her a greater amount of maintenance for a longer period of time. Appellee, Keith Kissinger ("Keith"), contends that the maintenance award was proper. We affirm.

The parties were married on November 5, 1976, and they had one child during their marriage. On December 10, 1998, Keith filed a petition to dissolve the marriage. The case was referred

to the domestic relations commissioner (commissioner) and on August 17, 1999, an evidentiary hearing was held. On January 4, 2000, the commissioner filed a proposed decree. Among other things, the proposed decree awarded Patricia \$300.00 per month in maintenance for a period of five years. Patricia filed exceptions to the proposed decree, alleging that the recommended maintenance award was for too short a duration and in too small an amount. On March 15, 2000, the circuit court entered an order overruling the exceptions, and the decree was entered. Patricia then filed a motion to alter, amend, or vacate, which was denied by order dated July 27, 2000. This appeal followed.

Patricia's only argument on appeal is that the circuit court's award of \$300.00 per month maintenance for five years is inadequate. She contends that an appropriate award would be \$1,000.00 per month until she attains the age of 65, remarries, or dies.

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.

Application of the 403.200 factors in the present case discloses the following. The parties were married on November 5, 1976, and separated on November 8, 1998. The divorce decree was entered on March 15, 2000. The parties were together for 22 years prior to separation and were married for a total of approximately 24 years and four months. Patricia was 45 at the time the decree was entered, and Keith was 41.

Patricia works at Dawahares in Corbin and earns \$446.00 per month, or \$5,352.00 per year. This income is based upon twenty hours per week at the minimum wage of \$5.15 per hour. Keith works as the service manager of a car dealership and earns \$3,500.00 per month, or \$42,000.00 per year.

Patricia has reasonable monthly living expenses of approximately \$1,600.00. Keith has reasonable monthly living expenses of approximately \$1,600.00 per month, plus \$500.00 in monthly credit card payments. The decree noted that the parties lived beyond their means during the marriage.

The decree awarded Patricia the marital home, which was valued at \$63,000.00. The home has a \$33,000.00 mortgage, which was assigned to Patricia, leaving approximately \$30,000.00 in equity in the property. In addition to her nonmarital property, Patricia was assigned \$2,950.00 in marital property. Patricia was assigned a \$3,000.00 debt owed to her aunt, which represented borrowings by Patricia subsequent to the separation for living expenses. Keith was assigned the parties' entire \$18,398.75 credit card debt balance.¹

At the time of the marriage, both Keith and Patricia worked at Roses Department Store. Following the marriage, Patricia quit the Roses job and for the balance of the marriage did not work, except occasionally during the Christmas season. In addition to his service manager job, Keith at times had an appliance repair business, and Patricia answered the phone and scheduled repairs for the business. Patricia has a high school education and does not have any vocational training. The record discloses that Patricia suffers from medical problems with her back, and the circuit court appears to have accepted the medical evidence that Patricia suffers from a ruptured disc and stress.

The amount and duration of maintenance is within the sound discretion of the trial court. Weldon v. Weldon, Ky. App., 957 S.W.2d 283, 285-286 (1997); Russell v. Russell, Ky. App., 878 S.W.2d 24, 26 (1994). Furthermore, in matters of such

¹Keith was ordered to pay child support of \$467.65 per month; however, in May 2000, two months after the decree was entered, by agreed order, child support was terminated because the child had turned eighteen and completed high school.

discretion, "unless absolute abuse is shown, the appellate court must maintain confidence in the trial court and not disturb the findings of the trial judge." Id. (Emphasis original); See also Clark v. Clark, Ky. App., 782 S.W.2d 56, 60 (1990); Platt v. Platt, Ky. App., 728 S.W.2d 542 (1987); and Moss v. Moss, Ky. App., 639 S.W.2d 370 (1982). "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." Perrine v. Christine, Ky., 833 S.W.2d 825, 826 (1992).

The circuit court awarded Patricia maintenance of \$300.00 per month for a period of five years, or a total of \$18,000.00. Further, substantially all of the parties' marital property went to Patricia, including the only major marital property, the \$30,000.00 equity in the marital home. Keith was assigned substantially all of the parties' debt, including \$18,398.75 in credit card debt. As a result of the circuit court's assignment of property and debt, Keith received little property and was assigned significant debt. Patricia, on the other hand, received the marital home and substantially all of its contents and little debt.

Patricia was 45 at the time of the decree, and has retail sales experience, as well as the experience attained from her contribution to Keith's appliance repair business. There are no children at home to support. Patricia is young enough to obtain additional training and education so as to permit her to support herself. While Patricia has been diagnosed with a

ruptured disc, it appears that Patricia should still be able to engage in sedentary employment.

While there are factors present which could have justified a more favorable award, nevertheless, we are not persuaded that the circuit court's maintenance award was an absolute abuse of discretion. We will not substitute our judgment for the circuit court's.

Patricia suggests that we adopt one or more of various formulas she contends would make the calculation of maintenance awards more fair and uniform. However, her proposed formulas fail to adequately account for all of the statutory factors set forth in KRS 403.200, and, accordingly, the formulas do not comply with the legislative enactment mandated for the awarding of maintenance as reflected in KRS 403.200.

For the foregoing reasons, the judgment of the Whitley Circuit Court is affirmed.

EMBERTON, JUDGE, CONCURS.

KNOPF, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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