

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002332-MR

LARRY JAMES KEETON

APPELLANT

v. APPEAL FROM LAWRENCE CIRCUIT COURT
HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 00-CI-00065

CORA ROBERTA KEETON

APPELLEE

OPINION
AFFIRMING IN PART - REVERSING IN PART AND REMANDING
** ** * * * * *

BEFORE: GUIDUGLI, HUDDLESTON AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. In this dissolution action, Larry James Keeton (hereinafter "Larry") has appealed from the October 11, 2001, final judgment of the Lawrence Circuit Court. The two main issues on appeal are whether Cora Roberta Keeton (hereinafter "Cora") is entitled to an award of permanent maintenance and whether Larry, a disabled person receiving Social Security Disability benefits, should be responsible for the medical bills of his child once she has reached her majority and graduated from high school. Having reviewed the record and the parties' excellent briefs, we find no error in the award of permanent maintenance. However, we hold that the circuit court erred in

requiring Larry to provide health care beyond the age of majority. Hence, we affirm in part, and reverse and remand in part.

Larry and Cora, lifelong residents of the Commonwealth, were married in Maze, Kentucky on July 16, 1975. Two children were born of the marriage: Tammy Lee Keeton, who had reached the age of majority by the time the dissolution petition was filed, and Sondra Lee Keeton, whose date of birth is March 5, 1984, and who was still a minor at the time the dissolution petition was filed. In 1995, Larry was awarded Social Security Disability benefits, and his minor children also were awarded Social Security benefits.

Larry and Cora separated in January 1997, and Larry filed a Petition for Dissolution of Marriage on March 31, 2000. The action went before the DRC, who decided the case based upon the short depositions of Larry and Cora. On October 11, 2001, the circuit court adopted the DRC's recommendations, which we shall set out as follows:

FINDINGS OF FACT:

1. Petitioner, LARRY JAMES KEETON, is forty-six (46) years of age, born May 16, 1955, and resides at HC 69 Box 182, Martha, Lawrence County, Kentucky.
2. Respondent, CORA ROBERTA KEETON, is forty-five (45) years of age, [born] January 19, 1956, and resides at HC 75 Box 225, Martha, Lawrence County, Kentucky.
3. Petitioner and Respondent are residents of the Commonwealth of Kentucky and have been residents hereof for not less than 180 days next preceding the filing of the petition.

4. Petitioner is disabled and receives monthly Social Security Disability benefits in the amount of \$1,120.00.
5. Respondent is unemployed.
6. Petitioner and Respondent were married July 16, 1975, in Lawrence County, Kentucky, where said marriage is registered.
7. Petitioner and Respondent separated [in] January 1997, and have remained separate and apart since that date.
8. Two (2) children were born of the marriage, one (1) of which remains a minor, SONDRA LEE KEETON, born March 5, 1984.
9. To the best of Respondent's present knowledge and belief, she is not now pregnant.
10. Neither party to this action is an active member of the military.
11. The conciliation provisions of KRS 403.170 do not apply.
12. The marriage between Petitioner and Respondent is irretrievably broken; there being no prospect of a reconciliation.
13. Petitioner and Respondent accumulated the following marital estate: 1) 1992 Pontiac.
14. Petitioner and Respondent accumulated marital debt.
15. Respondent requests custody of the parties' minor child.
16. The parties' minor child receives Social Security benefits in the amount of \$585.00 per month from Petitioner's Social Security Disability.
17. Respondent[] requests an award of maintenance.
18. Respondent has a sixth (6th) grade education with extremely limited

abilities to read and write. Respondent has never had a driver's license.

19. Respondent never worked outside the home and performed the duties of a housewife and mother during the twenty-six (26) year marriage. Respondent has no monthly income of her own other than \$207.00 per month food stamps.
20. Respondent lacks sufficient property to provide for her reasonable needs and is unable to support herself through appropriate employment.

CONCLUSIONS OF LAW:

Having made the foregoing Findings of Fact, the Court issues the following Conclusions of Law:

1. The marriage between LARRY JAMES KEETON and CORA ROBERTA KEETON, being irretrievably broken, a Decree of Dissolution of Marriage, Order and Judgment should enter.
2. Petitioner should be awarded the 1992 Pontiac.
3. Petitioner should assume and be responsible for marital debts.
4. Petitioner and Respondent should be responsible for debts contracted in their respective names subsequent to January 1997.
5. Respondent should be awarded custody of the parties' minor child.
6. Petitioner should be awarded standard visitation with the parties' minor child.
7. Petitioner should pay child support.
8. Petitioner and Respondent should provide healthcare for the parties' minor child.
9. Respondent should be awarded maintenance.

DECREE OF DISSOLUTION OF MARRIAGE
ORDER AND JUDGMENT:

Having made the foregoing Findings of Fact and Conclusions of Law, the Court enters the following Decree of Dissolution of Marriage, Order and Judgment:

DECREE OF DISSOLUTION OF MARRIAGE:

1. The marriage between LARRY JAMES KEETON and CORE ROBERTA KEETON entered into on the 16th day of July 1975, is HEREBY DISSOLVED and each party is restored to the status of an unmarried person.

ORDER AND JUDGMENT:

1. Respondent is awarded Custody of the parties' minor child, Sondra Lee Keeton.
2. Petitioner is awarded standard visitation with the parties' minor child pursuant to the 24th Judicial Circuit Standard Visitation Guidelines.
3. The minor child's receipt of Social Security benefits in the amount of \$585.00 per month from Petitioner's Social Security Disability shall serve and satisfy Petitioner's child support obligation.
4. Petitioner shall have the financial responsibility for providing health care, payment of deductibles and co-payments, for the parties' minor child(ren), if health care is available through his employer at reasonable cost. In the event health care is not available through the Petitioner's employer at reasonable cost, then the Respondent shall have the financial responsibility for providing health care, if health care is available through her employer at reasonable cost. The obligation of the party providing health care shall extend beyond the age of majority, to any unmarried child up to the age of twenty-five (25) years of age who is a full-time student enrolled in an accredited educational institution, and who is primarily dependent on the insured parent for maintenance and support.

The cost of extraordinary medical expenses shall be allocated between the Petitioner and Respondent in proportion to their adjusted gross incomes or percentage of their combined incomes, as set forth in the most current Child Support Worksheet in this case.

"Extraordinary Medical Expenses" means, uninsured expenses in excess of \$100.00 per calendar year per child. "Extraordinary Medical Expenses" includes, but is not limited to, the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optical, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs, and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.

In the event health care is not available through either the employer of the Petitioner or Respondent, then either party must obtain health care at the time it becomes available through their employer at reasonable cost. In any case administered by the Cabinet for Human Resources, if the Petitioner or Respondent is enrolled through an insurer but fails to enroll the child in family coverage, the other party, or the Cabinet for Human Resources, may, upon application, enroll the child(ren).

5. Petitioner is awarded the 1992 Pontiac free and clear of all claims of the Respondent. Petitioner shall assume all incidents of liability relative to the ownership thereof and hold the Respondent harmless.
6. Petitioner shall assume and be responsible for all marital debt.
7. Petitioner shall assume and be responsible for debts contracted in his individual name subsequent to January 1997.

8. Respondent shall assume and be responsible for debts contracted in her individual name subsequent to January 1997.
9. Respondent is awarded Maintenance.
10. Effective September 1, 2001, Petitioner shall pay to the Respondent, maintenance in the amount of FOUR HUNDRED DOLLARS (\$400.00) per month, due and payable on or before the fifth (5th) day of each month and continuing thereafter until further Orders of the Court or the same is terminated by operation of Kentucky law.
11. Each party is responsible for payment of their respective attorney fees and Court costs.

In addition, the circuit court's order overruled Larry's exceptions to the DRC's recommendations as well as his motion for further findings. This appeal followed.

In his brief, Larry argues that there is insufficient evidence in the record to support an award of maintenance of \$400.00 per month and that the circuit court abused its discretion in making the award. In particular, he argues that Cora is unemployed and unable to drive purely by choice, that the circuit court failed to consider the relevant factors contained in KRS 403.200(2), including standard of living and Cora's income from all sources, and that Cora only wants to punish Larry. Additionally, Larry argues that additional findings of fact could have established that there was no evidence to support an award of maintenance and that the circuit court erred in requiring him to be responsible for his child's medical expenses once she had reached the age of majority and graduated from high school. He cites Youngblood v. James, Ky. App., 883 S.W.2d 512 (1994), to

support his proposition that a disabled individual with Supplemental Security Income as his sole income source cannot be required to pay his child's medical bills or support.

On the other hand, Cora argues that she is indeed entitled to an award of maintenance. She cites their lengthy marriage during which she acted as a homemaker and raised their two daughters, her 6th grade education and limited ability to read and write, her lack of income other than \$207.00 in food stamps per month, and her lack of job training. She also argues that additional findings of fact would not have changed the outcome. Lastly, Cora points out that the Youngblood decision dealt with a prior version of the child support statute, KRS 403.212, which was later amended to include Supplemental Security Income as income.

Larry first argues that the circuit court abused its discretion in awarding maintenance. Our standard of review regarding an award of maintenance is that of abuse of discretion. "The amount and duration of maintenance is within the sound discretion of the trial court. Gentry v. Gentry, Ky., 798 S.W.2d 928, 937 (1990); Combs v. Combs, Ky.App., 622 S.W.2d 679, 680 (1981), citing KRS 403.200(2) and Browning v. Browning, Ky.App., 551 S.W.2d 823 (1977)." Russell v. Russell, Ky.App., 878 S.W.2d 24, 26 (1994).

Furthermore, we are mindful that in matters of such 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." Clark v. Clark, Ky.App., 782 S.W.2d 56, 60 (1990). (Emphasis added.) See also Platt v. Platt, Ky. App., 728 S.W.2d 542 (1987), and Moss v. Moss, Ky.App., 639 S.W.2d 370 (1982).

Weldon v. Weldon, Ky.App., 957 S.W.2d 283, 285-86 (1997).

The legislature set out the requirements for an award of maintenance in KRS 403.200 as follows:

403.200 Maintenance; court may grant order for either spouse

- (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 amount 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.

We believe that the circuit court was justified in awarding Cora maintenance in the amount of \$400.00 per month and that the record supports this award. At the time the marriage was dissolved, Larry and Cora had been married for twenty-six years. Cora had never worked outside the home and had performed the roles of homemaker and mother. Although she had a 6th grade education, she had an extremely limited ability to read and write and had never learned to drive or obtained a driver's license. Her sole monthly income was \$207.00 in food stamps. Additionally, Larry was awarded the only item of marital property, namely, the 1992 Pontiac. Therefore, it is clear that she did not have sufficient property to provide for her reasonable needs. Robbins v. Robbins, Ky.App., 849 S.W.2d 571 (1993); Carter v. Carter, Ky.App., 656 S.W.2d 257 (1983).

We also cannot agree with Larry's contention that because Cora is unemployed, she is therefore not entitled to an award of maintenance. Larry argues that Cora is voluntarily unemployed, and that he should not be required to pay maintenance when she should be able to find employment. Based upon the facts of this case, we are unable to agree with his contention. In Sayre v. Sayre, Ky.App., 675 S.W.2d 647 (1984), the wife, a

registered nurse, admitted that she could earn substantially more money if she found other employment in a hospital or some other setting, but that she wanted to stay at her current lower paying employment because it ensured stability. Because the matter was a personal choice on her part, the circuit court's decision not to award maintenance was upheld. In Owens v. Owens, Ky.App., 672 S.W.2d 67 (1984), James presented the argument that because Lynne refused to obtain employment, the trial court awarded her less marital property. Lynne had worked as a secretary during the early years of their marriage. However, we concluded that the refusal to obtain employment "is not to be used in determining the division of marital property, but a factor in determining whether maintenance should be awarded." Id. at 70. In the present case, the circuit court considered the fact that Cora was unemployed and also made several findings regarding her educational background, deficiencies in her reading and writing skills, and lack of a driver's license. In light of the combination of factors in this case, Cora is entitled to an award of maintenance.

Although we are mindful that Larry is on a fixed income of \$1,120.00 per month in Social Security Disability benefits and must be responsible for his own expenses, we agree with Cora's argument that this is a factor for the circuit court to consider in determining whether to award maintenance. Here, the circuit court was clearly attempting to balance the needs of the two individuals involved, one with an income of \$1,120.00 per month and the other with an income of \$207.00 per month in food stamps. We believe that the circuit court properly considered the factors

set forth in KRS 403.200 and did not abuse its discretion in either awarding permanent maintenance or fixing the amount at \$400.00 per month.

Larry next argues that the circuit court erred in denying his motion for further findings of fact. He had requested that the circuit court make further findings regarding why Cora was unable to support herself, what type of work she could perform, what wages should be imputed to her, the standard of living prior to their separation, and Larry's ability to meet his own needs. However, we agree with Cora's argument that there were sufficient findings of fact to justify the award of maintenance and that further findings would not have changed the result.

Lastly, Larry argues that the circuit court erred in ordering him to pay his child's medical expenses after she reached the age of majority as he is disabled and will never be employable. As pointed out in Cora's brief, the circuit court was required by statute to include specific language regarding the provision of health care. KRS 403.211(7) provides, in part, that:

KRS. 403.211

. . . .

(7)

. . . .

(c) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:

1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include, but not be limited to, insurance coverage, payments of necessary health care deductibles or copayments; and

2. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.

(d) If health care insurance coverage is not reasonable and available at the time the request for the coverage is made, the court order shall provide for health care insurance coverage at the time it becomes reasonable and available.

(8) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their combined monthly adjusted parental gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of one hundred dollars (\$ 100) per child per calendar year. "Extraordinary medical expenses" includes, but is not limited to, the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs

and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.

Based upon the statute, Larry should not be responsible for providing health care but only health care coverage for his daughter until her twenty-fifty birthday. However, it appears that the court omitted a word in the order and judgment. In the first paragraph of section 4, the DRC states that "the obligation of the party providing health care shall extend beyond the age of majority, to any unmarried child up to the age of twenty-five (25) years of age who is a full-time student enrolled in an accredited educational institution, and who is primarily dependent on the insured parent for maintenance and support." The statute provides only that the designated parent must maintain health care coverage up to the age of 25. KRS 403.211(7)(c)(2). Here, the order requires Larry to provide health care to his daughter past the age of 18, which is in contravention to the statute. Therefore, the circuit court erred in requiring Larry to provide health care for Sondra past the age of 18.

For the foregoing reasons, the judgment is affirmed in part, and reversed in part and this case is remanded for correction of the order and judgment consistent with this opinion.

HUDDLESTON, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINIONS.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent on both issues before this Court. As to the award of maintenance, I

believe the trial court failed to follow the statutory mandates of KRS 403.200; the case law, such as Dotson v. Dotson,¹ Cochran v. Cochran,² and Garrett v. Garrett,³ and CR 52.04 by not making the required findings to support a maintenance award. In Larry's CR 52.04 motion, he specifically asked the trial court to make the following findings of fact:

1. Findings as to why the Respondent is unable to support herself through appropriate employment.
2. Findings as to what type of work the Respondent can perform.
3. Findings as to what wages or salary that should be imputed to the Respondent.
4. Findings as to the standard of living established for the Petitioner and Respondent prior to their separation in January 1997.
5. Findings as to the Petitioner's ability to meet his own needs from his Social Security Disability Benefits.
6. If the Respondent is entitled to any maintenance, this Court should make a Findings [sic] of Fact as to the length of time it would take for her to become self-sufficient.
7. A findings [sic] of fact as to the Respondent's income after January 1997 until to [sic] date.

Clearly, these findings are necessary to justify an award of maintenance. While Cora only has a sixth-grade education and has extremely limited abilities to read and write, and does not have a driver's license or any previous work

¹Ky., 864 S.W.2d 900, 902-03 (1993).

²Ky.App., 746 S.W.2d 568, 570 (1988).

³Ky.App., 766 S.W.2d 634, 636 (1989).

experience; she was only 45 years old at the time of the decree, she had worked as a homemaker for 26 years, and she was in good health. It was an abuse of discretion for the trial court to award Cora maintenance without making the required specific factual finding concerning her ability to work.⁴ While Cora's job prospects may be very limited, it would appear that she could earn at least minimum wage by performing housekeeping services or other manual labor. Meanwhile, Larry has been determined to be totally disabled from substantial gainful employment. It was also an abuse of discretion for the trial court to award Cora maintenance without making the required specific factual finding concerning Larry's ability to meet his own needs while paying maintenance to Cora.⁵ The trial court's award should be vacated and this matter should be remanded for the required factual findings.

As to the health care coverage for 18-year-old Sondra, once again the trial court has clearly failed to follow the statutes. KRS 403.211(7)(c)(2) requires the court order to include "[a] statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered." The judgment should

⁴KRS 403.200(1)(b); Cochran, supra.

⁵KRS 403.200(2)(f); Dotson, supra; Garrett, supra.

be vacated and this matter should be remanded for the proper inclusion of the statutorily mandated provisions. The Majority Opinion fails to squarely address this issue.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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