

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000336-MR
AND
NO. 2001-CA-002702-MR

CHARLES E. PIERCE

APPELLANT

v. CONSOLIDATED APPEALS FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 00-CI-00107

KINDRA JANE PIERCE

APPELLEE

OPINION
AFFIRMING

** ** * * **

BEFORE: BARBER, COMBS, and KNOPF, Judges.

COMBS, JUDGE. Charles Pierce appeals from a final decree of the Kenton Circuit Court that divided the parties' marital debt and ordered him to pay child support, maintenance, and the costs of private school tuition for their daughter, Kierra. Pierce also appeals a subsequent order that denied his request to terminate maintenance. The appeals have been consolidated. We affirm as to both.

Charles and Kindra Pierce were married on November 17, 1989. They separated in December 1999 and were divorced by a decree entered on January 19, 2001. They reached a settlement with respect to the custody of their only child and the distribution of their personal property -- both marital and nonmarital. There was no real property to divide. However, they were unable to agree as to issues of child support, marital debt, maintenance, or attorney's fees.

Following a hearing, the trial court found that Charles earns slightly less than \$41,000.00 per year while Kindra, who does not have a high-school diploma, earns just over half that amount per year. The terms of the divorce decree provided that Charles would pay \$94.00 per week to Kindra as support for their minor daughter, Kierra. In addition, beginning with the 2000-2001 school year, Charles was ordered to pay one-half of Kierra's monthly parochial school tuition and other school costs. Nearly all of the marital debts (totalling more than \$15,000.00) were either assigned to or assumed by Charles, and he was ordered to pay maintenance to Kindra (on a sliding scale) for a period of four years. Finally, Charles was ordered to pay the sum of \$1,000.00 as a partial payment of Kindra's attorney's fees. Charles appealed the trial court's order in February 2001.

While the appeal was pending, Charles filed bankruptcy and Kindra remarried. The marital debts assigned to Charles pursuant to the decree were discharged, and he filed a motion to terminate his maintenance obligation. Kindra filed a motion requesting an increase in child support, an order directing Charles to keep current his maintenance obligation, and an award of her attorney's fees. Relying in part upon express provisions included in the divorce decree, the trial court denied Charles's motion to terminate maintenance and again ordered him to pay a portion of Kindra's attorney's fee. Charles appealed.

Before addressing the merits of Charles's appeal, we first note the deficiencies in his brief to this Court. Deviating from the requirements of Kentucky Rules of Civil Procedure (CR) 76.12(4)(iii), the appellant's brief does not set forth clearly and succinctly "contentions with respect to each issue of law relied upon for reversal." Because the brief does not clearly specify the claimed errors, Kindra argues that she "has been placed in a position of responding to almost every ruling the trial court made and to provide support for affirming each of those rulings." Appellee brief at 7. Consequently, Kindra contends that she has incurred a more substantial legal fee in these proceedings.

The appellant's brief also fails to comply with the requirement of CR 76.12(4)(c)(iv) and (v) by omitting any

reference to the specific places in the trial court's record providing evidentiary support for the factual statements and assignments of error included in the brief. Even after these omissions were called to Charles's attention, the deficiencies were not corrected or cured by way of a reply brief.

Nevertheless, despite Kindra's request that we strike the brief and dismiss the appeal, we have elected to proceed to consideration of the merits of the appeal.

In his first argument, Charles contends that the trial court abused its discretion by assigning nearly all of the marital debt to him alone. He also argues that the trial court erred in asking him to pay the amounts of maintenance and child support at issue as well as in ordering him to pay a portion of his daughter's parochial school tuition. We shall address each contention in turn.

Charles argues that the court's decision to assign to him 97% of the couple's marital debt is "unfair on its face." However, according to Kindra, Charles agreed to assume sole responsibility for more than one-half of the couple's marital debt during the course of the final hearing. Charles does not dispute the contention. This agreement left only a portion of the marital debt to be assigned by the trial court, and the great bulk of it was assigned to Charles.

There is no presumption that marital debts must be divided equally or in the same proportions. Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001). On the contrary, debts incurred during a marriage are traditionally assigned in consideration of the respective economic circumstances of the parties and their respective abilities to assume the indebtedness. Id. In this case, Charles has failed to analyze the relative financial situations of Kindra and himself in order to demonstrate that the trial court's allocation of debt was so unfair as to amount to an abuse of discretion. From our review of the limited record, we cannot conclude that the division of debts in this case was inequitable or otherwise unlawful.

We must grant great deference to the role of the fact-finder and to the exercise of the trial court's considerable discretion. This principle is particularly true in cases where it appears that there are meager assets to divide and that it is unlikely that there will be enough income following the divorce to meet the needs of both parties.

In this case, the trial court found specifically that Kindra lacked sufficient income and property to pay a significant portion of the parties' debts or to provide for her reasonable needs. Additionally, the evidence presented by Kindra indicates that Charles voluntarily increased his monthly expenditures following the parties' separation. While Kindra

took steps to reduce her expenses, she was still unable to meet her monthly obligations. Reviewing the evidence as to the parties' respective resources and expenses, we find no abuse of the court's broad discretion in assigning the marital debts. KRS¹ 403.220. Parenthetically, as Kindra observes, Charles's obligation to pay these debts has been discharged through the bankruptcy proceedings -- a fact which renders this issue essentially moot.

Charles also contends that the trial court's order as to child support and monthly maintenance was excessive. He argues that the court erred by failing to take into account the weight of the debt assigned to him as well as the burden of his other financial obligations before computing the amount of these awards.

Charles's child support obligation was calculated as set forth by the statutory guidelines. KRS 403.211(2). He never requested that the trial court deviate from the guidelines. His own counsel computed the amount of the child support obligation at an amount higher than that which was eventually ordered by the trial court. Charles has failed to set forth any facts to indicate that the application of the guidelines was unjust or inappropriate in this case.

¹ Kentucky Revised Statutes

Consequently, the trial court did not err by establishing child support according to the statutory guidelines.

Charles also contends that the trial court erred by awarding an excessive amount of maintenance to Kindra. And once again, he has failed to cite to any authority or to any facts from the record to support his contention.

The issue of amount and duration of maintenance is within the sound discretion of the trial court. Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990). Our review of the record indicates that the court carefully considered the circumstances of both parties prior to calculating the amount of the maintenance award to Kindra. It found specifically that Kindra had a limited education and, therefore, a limited ability to earn money.

She will need a period of some years to obtain sufficient education and training to acquire employment skills sufficient to meet her needs. Additionally, [she] has primary responsibility for the care of the parties' child and a child by a prior marriage.

Findings and Conclusions at 4. We cannot agree that the trial court abused its discretion by awarding maintenance to Kindra -- on a sliding scale -- for a four-year period.

Charles's first argument concludes with his contention that he should not have been ordered to contribute to his daughter's parochial school tuition since such an order is

violative of the Constitutions of the United States and of Kentucky and that it is inconsistent with Kentucky precedent. Considering the parties' respective resources and their long-standing agreement to educate their daughter in a Christian primary school, we cannot conclude that the trial court erred by ordering Charles to contribute one-half of the cost of his daughter's school tuition amounting to \$50.00 per month. His contention that the order violates either the state or federal constitution is simply without merit.

In his second argument, Charles contends that the court erred substantively by refusing to terminate his maintenance obligation following Kindra's re-marriage. He contends that the court also erred procedurally by failing to conduct a hearing to establish whether Kindra was still needy and dependent after her re-marriage.

Maintenance is awarded in a dissolution proceeding only where a dependent spouse requires the financial support of a former spouse. KRS 402.200. KRS 403.250(2) provides 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." (Emphasis added.)

In this case the trial court expressly provided in its decree as follows:

Pursuant to statute, the court has divided the parties' marital assets and liability prior to considering the award of maintenance. In making the child support and maintenance awards above, the Court specifically intends that the Wife will have those assets as awarded by the Court. The Court also specifically intends that the Wife will be free of those liabilities that have been allocated to the Husband. The effect of the allocation of assets and liabilities is in part to provide for the Wife's maintenance and support. If for any reason the Wife does not receive those assets awarded to her, or if for any reason she must pay any of the debts assigned to the Husband, the Court has determined that the effect will be to cause the Wife to be in need of additional child support and/or maintenance. The issues of child support and maintenance shall be subject to the continuing jurisdiction of the court for purposes of establishment, termination, or modification in both amount and duration, in the event that the husband obtains relief in any bankruptcy court from any obligation, due directly to the wife, or obtains relief from any debt which the wife must as a result pay, or which effectively modifies the property division between the parties, thus affecting the need for support by the wife and the child of the parties.

Decree at 2. We are persuaded that this language serves to extend Charles's maintenance obligation beyond Kindra's remarriage since the award was in essence a part of the couple's property division. We believe that the trial court also meant by this language to retain jurisdiction over the award and the ability to alter or adapt it depending upon Charles's actions and the consequences resulting to Kindra. The trial court did

not err by ruling that Kindra's remarriage had no effect on Charles's obligation to pay maintenance for the limited period of four years. No evidentiary hearing was needed for the court to reach this conclusion as to its own reasoning.

The judgment and order of the Kenton Circuit Court are affirmed.

BARBER, JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS IN PART AND DISSENTS IN PART.

KNOFF, JUDGE, CONCURRING IN PART AND DISSENTING IN PART: I agree with the portions of the majority opinion which uphold the trial court's assignment of marital debt, and its initial orders respecting the amount and duration of maintenance and child-support. However, I disagree with the majority that the trial court had the authority to extend maintenance beyond Kindra's re-marriage.

As the majority correctly notes, KRS 403.250(2) provides that the obligation to pay future maintenance terminates automatically upon the re-marriage of the party receiving maintenance, unless the decree expressly provides otherwise. The majority interprets a clause of the decree as authorizing the trial court to extend the maintenance award beyond Kindra's re-marriage. I cannot agree with this interpretation. The trial court inserted this clause in the

decree to deal with the possibility that Charles might file for bankruptcy, but it has no effect upon the application of KRS 403.250(2).

The complex interaction between domestic relations and bankruptcy law is discussed at length in Chapter 18 of Professor Graham and Justice Keller's treatise, 16 Kentucky Practice Domestic Relations Law (West, 1997 & 2003 Supp.). In summary, a bankruptcy court has the authority to discharge debts assigned as part of a property division in a dissolution action, but it cannot discharge obligations which are "in the nature of support". Id. at §18.4, p. 69. In this case, the trial court's original assignment of debt was clearly made as part of its division of property, and the bankruptcy court apparently found those debts to be dischargeable.

However, the trial court recognized the possibility that Charles could seek discharge of these debts in bankruptcy, and that Kindra would then become liable for those debts despite the express provisions of the decree. Consequently, the trial court stated that its maintenance award was based, in part, on the assignment of the marital debt to Charles. Accordingly, the decree provides that the maintenance award can be modified if Charles's obligation on those debts is discharged.

Such a reservation of jurisdiction is clearly appropriate under Low v. Low, Ky., 777 S.W.2d 936 (1989). But

in Low v. Low, our Supreme Court was applying the common-law rule that an award of lump-sum maintenance cannot be modified merely upon a showing of changed circumstances. See Dame v. Dame, Ky., 628 S.W.2d 625 (1982). The Court held that the husband's discharge of his assigned debts was an extraordinary event which left the maintenance award without "a sufficient legal predicate". Consequently, the Court concluded that application of the common-law rule would result in manifest injustice to the wife.

I agree with the majority that, as was the case in Low v. Low, the bankruptcy court's discharge of Charles's obligation on these debts essentially defeats the maintenance and property-division scheme. Nonetheless, by enacting KRS 403.250(2), the General Assembly has directed that maintenance awards must terminate upon the re-marriage of the spouse seeking maintenance unless the decree or the agreement expressly provides otherwise. In this case, the language of the decree cannot be read as broadly as the majority asserts. Although I concede that this result works an injustice on Kindra, I am convinced that this result is compelled by KRS 403.250(2).

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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