

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-001771-MR

DEBORAH MANNING

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE LEONARD L. KOPOWSKI, JUDGE  
ACTION NO. 98-CI-01353

JAMES MANNING

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND SCHRODER, JUDGES.

DYCHE, JUDGE: When James and Deborah Manning divorced in 2002, it was ordered that James would increase Deborah's monthly maintenance payment if she were required to incur a second mortgage on the marital home. Deborah was able to obtain a first mortgage on the home but later claimed that she owed a second mortgage to her mother and sought the increase in maintenance based upon that second mortgage. The trial court denied her the increase, and Deborah appeals.

The specific provision, recommended by the Domestic Relations Commissioner and adopted by the Campbell Circuit Court, in the dissolution judgment, entered January 11, 2002, provided thus:

Respondent shall pay to Petitioner the sum of \$600.00 per month for maintenance until such time as either Petitioner obtains a second mortgage to purchase Respondent's interest in this real estate, at which time the monthly maintenance payment shall increase by the amount of the second mortgage necessary to pay Respondent, but no more than \$450.00 per month, and shall also be subject to increase if Petitioner obtains a car loan not to exceed \$250.00 per month. Upon the happening of these events, then Respondent shall immediately increase his monthly maintenance payment not to exceed \$1,300.00 per month for a total of 48 months of maintenance.

By the time the final decree was entered Deborah had already paid James his share (\$50,310) of the equity in the marital residence. No second mortgage was required for Deborah to do so. However, in November 2002 Deborah executed a second mortgage to her mother in the amount that she had paid James and demanded that James increase his monthly maintenance payment by \$450. James resisted by filing a motion on February 3, 2003, requesting the trial court to determine whether he was indeed responsible for the increase in maintenance.

The domestic relations commissioner held a hearing and recommended that James not pay the increased amount. The trial

court adopted the commissioner's report, overruling Deborah's exceptions and objections.

The domestic relations commissioner made his decision based on the following facts, among others: That Deborah did not obtain the second mortgage until nearly a year after paying James his \$50,310 share with no request for additional maintenance from James until November 2002; that Deborah's mother did not deposit the payment checks to her from Deborah until immediately prior to the April 2003 hearing date; that the terms of the promissory note were questionable; and that no mention of necessity of a second mortgage was made at the earlier hearing of April 2002.

"The determination of questions regarding maintenance is a matter which has traditionally been delegated to the sound and broad discretion of the trial court, and an appellate court will not disturb the trial court absent an abuse of discretion. An appellate court is not authorized to substitute its own judgment for that of the trial court where the trial court's decision is supported by substantial evidence." Bickel v. Bickel, Ky. App, 95 S.W.3d 925, 927 -928 (2002) (footnotes omitted). Deborah fails to demonstrate either that the facts as found were clearly erroneous or that the trial court abused its discretion.

Accordingly, the judgment of the Campbell Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

Robert N. Trainor  
Covington, Kentucky

BRIEF FOR APPELLEE:

Paul R. Markgraf  
Fort Mitchell, Kentucky