

RENDERED: FEBRUARY 11, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002419-MR

WILLIAM R. WRIGHTSON

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE HENRY F. WEBER, JUDGE
ACTION NO. 02-CI-500050

SVETLANA N. WRIGHTSON
AND JOSEPH V. MOBLEY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; BARBER, JUDGE; MILLER, SENIOR
JUDGE.¹

COMBS, CHIEF JUDGE: Dr. William R. Wrightson ("Bill") appeals from an October 20, 2003, order of the Jefferson Family Court that amended the court's judgment with respect to an award of maintenance to the appellee, Svetlana N. Wrightson. We affirm.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Svetlana, a native of the former Soviet Union, married Bill in January of 1992. No children were born of the marriage, and the couple separated in December 2001. On January 6, 2003, the family court entered a decree of dissolution reserving for resolution those issues relating to maintenance and a division of the property.

A hearing was held on the remaining issues on April 22, 2003. On August 18, 2003, the court entered its findings of fact, conclusions of law, and a judgment, awarding to Bill the marital residence -- along with the first mortgage and line of credit. He was ordered to pay Svetlana \$7,500.00 for her interest in the residence. Svetlana received assets having a net value of nearly \$19,000.00; Bill was awarded assets having a net value of approximately \$16,000.00. In addition, Bill was ordered to pay Svetlana maintenance of \$500.00 per month for a period of five years.

Svetlana filed a CR² 59 motion, in which she requested the family court to modify its judgment by granting the marital residence to her rather than to Bill. The court did modify its judgment and awarded the house to Svetlana. It ordered her to pay Bill \$7,500.00 for his interest in the residence. Bill does not appeal from that portion of the judgment as modified.

² Kentucky Rules of Civil Procedure.

In her motion, Svetlana also objected to the award of maintenance -- \$729.16 less than she needed to meet her monthly expenses. She argued that it failed to take into account the anticipated increase in Bill's earnings following completion of his surgical fellowship. Svetlana asked the court to increase the maintenance award to \$1,000.00 per month and to increase it again "in June 2005 over the next three year period to recognize [Bill's] increased earnings" Motion at p. 2. The family court granted in part and denied in part Svetlana's request:

The court cannot predict what the financial circumstances of each party will be in two years. [Bill] may finish his residency and obtain a teaching position that pays \$140,000.00 per year or he may not. [Svetlana] may finish her education and obtain a position as an accountant that pays considerably more than \$40,000.00 per year or she may not. Although [Svetlana's] needs are currently in excess of \$1,000.00 per month, [Bill] does not have enough money to meet those needs at this time. Therefore, the Court will amend the Findings of Fact, Conclusions of Law and Judgment and order [Bill] to pay [Svetlana] maintenance of \$500.00 per month for the next two years, at which time maintenance may be amended subject to the provisions of KRS 403.250. . . .

This appeal followed.

Bill does not contest the language allowing for a modification of the *amount* of rehabilitative maintenance after

two years subject to the provisions of KRS³ 403.250 and a showing by Svetlana of a substantial and continuing change of circumstances. However, he contends that the family court erred by converting the original five-year award into one for permanent maintenance. He observes that the court's findings established Svetlana's ability to be self-supporting within five years of the entry of the judgment; therefore, leaving the duration of the maintenance award open-ended and amenable to additional review constituted an abuse of the court's discretion.

KRS 403.200 governs maintenance and provides in part as follows:

- (1) In a proceeding for dissolution of marriage . . . 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. . . .

- (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. . . .;
 - (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

³ Kentucky Revised Statutes.

- (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.

KRS 403.250(1) allows the provisions of any decree regarding open-ended maintenance to be modified "only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable." *Unconscionable* means "manifestly unfair or inequitable." Shraberg v. Shraberg, 939 S.W.2d 330, 333 (Ky. 1997). Determinations made with respect to an award of maintenance are deferred to the sound and broad discretion of the trial court. Bickel v. Bickel, 95 S.W.3d 925 (Ky.App. 2002). An appellate court is not authorized to substitute its own judgment for that of the trial court if the trial court's decision is supported by substantial evidence. Combs v. Combs, 787 S.W.2d 260 (Ky. 1990).

After reviewing the record and the amended judgment of the family court, we do not agree that the court intended to convert its original award of rehabilitative maintenance into a grant of permanent maintenance. The court's judgment took into account Svetlana's strained emotional and financial condition and her gradual progress toward a career in accounting. The court evaluated Bill's projected earnings while observing that

his current financial position made it impossible for him to provide fair maintenance to Svetlana. In balancing all of these factors, the judgment awarded maintenance to Svetlana of \$500.00 per month for five years.

In her motion to amend the judgment, Svetlana did not seek a permanent award of maintenance. Her objective was a consideration of Bill's impending, far more lucrative career prospects. While Bill's resources did not permit him to meet her present financial needs sufficiently, Svetlana asked that his position be re-evaluated after the initial two years. If it had drastically improved (as both she and Bill both anticipated), Svetlana argued that she should be entitled to an increase in the monthly award for the duration of the original term - specifically alluding to the three-year period remaining on the award.

The family court was persuaded that Svetlana would be able to recover from the emotional trauma of the divorce and would begin to make strides in building her own career. The court also believed that Bill was on the verge of a very successful career and that the parties' financial conditions were likely to change dramatically. The court entered its final award after reviewing the statutory elements underlying an award of maintenance, considering its own continuing jurisdiction and authority under the provisions of KRS 403.250(1) to modify a

maintenance award under appropriate circumstances, and weighing substantial evidence projecting that the parties' financial conditions would change dramatically in the near future. We conclude that the family court did not err by crafting the award as it did in light of its broad discretion in matters concerning maintenance. Substantial evidence bolstered the court's reasoning that both parties were in transition financially and emotionally. As it retained continuing jurisdiction, the court refrained from foreclosing future adjustments to the maintenance award. The court appropriately exercised its discretion in this matter showing both restraint and wisdom.

The judgment as amended is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mary Janice Lintner
Louisville, Kentucky

BRIEF FOR APPELLEE WRIGHTSON:

Joseph V. Mobley
Oliver B. Rutherford
Louisville, Kentucky