

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-002240-MR

WILLIAM D. LOGSDON, JR.

APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE THOMAS L. WALLER, JUDGE  
ACTION NO. 03-CI-00022

OLLIE LOGSDON

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: JOHNSON AND WINE, JUDGES; MILLER,<sup>1</sup> SPECIAL JUDGE.

WINE, JUDGE: On January 1, 2003, Ollie Logsdon, filed a petition for dissolution of marriage in Bullitt Circuit Court, case no. 03-CI-00022. William D. and Ollie Logsdon were married for twenty-four years with no children being born of the marriage. A hearing for temporary maintenance was held on May 23, 2003, before the domestic relations commissioner (DRC), John Schmidt. Neither Appellant, William, nor his counsel was

---

<sup>1</sup> Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

present at this hearing. The Appellee, Ollie, presented proof to the court, and the DRC recommended temporary maintenance of \$1,406 per month be awarded to Ollie. William requested the court suspend or set aside this recommendation on three separate occasions and each time the request was denied. On August 14, 2003, the trial court entered a judgment ordering maintenance of \$1,406 per month until a Qualified Domestic Relations Order (QDRO) was in place, at which time the award would be reduced to \$250 per month. The judgment further ordered William to pay the arrearages in maintenance owed from April 9, 2003, plus the legal interest on each payment. William was held in contempt of court for failure to pay up to this point, and Ollie was granted dissolution of the marriage. The DRC tendered two reports and recommendations to the court on December 21, 2004, and August 22, 2005. On August 25, 2005, a court order was entered for William to pay \$5,000 immediately for Ollie's medical necessities and living expenses. The order reiterated that the temporary maintenance order remained in effect through the pendency of the action. On October 11, 2005, the Bullitt Circuit Court adopted the two reports of the DRC. This appeal followed. We now affirm.

William first contends that the trial court erred in the amount and duration of temporary maintenance. It is well established in the Commonwealth that the amount and duration of

maintenance under Kentucky Revised Statutes (KRS) 403.200 is a matter within the sound discretion of the trial court. Russell v. Russell, 878 S.W.2d 24, 26 (Ky.App. 1994). Further, "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, 782 S.W.2d 56, 60 (Ky.App. 1990). See also Platt v. Platt, 728 S.W.2d 542 (Ky.App. 1987). It has also been established in the Commonwealth that all motions regarding temporary alimony or maintenance, pending an appeal to the Court of Appeals or motions seeking to enforce such payments, "shall be within the jurisdiction of the trial court, and orders of the trial court entered pursuant to a proper proceeding shall not be superseded. Penrod v. Penrod, 489 S.W.2d 524, 527-28 (Ky.App. 1972). A temporary maintenance order is interlocutory and not subject to review. Cannon v. Cannon, 434 S.W.2d 48 (Ky. 1968); Lebus v. Lebus, 382 S.W.2d 873 (Ky. 1964).

In this case, William argues that the only information considered before the DRC was Ollie's motion, and thus prompts this Court to review the evidence that was used by the trial court in refusing to modify, set aside, or suspend the temporary maintenance award.

The law is clear that the trial court has several options after receiving the report and recommendations of the

DRC. The court may adopt the report, modify the report, reject it in whole or in part, receive further evidence, or send the report back to the commissioner with instructions for further proceedings. Kentucky Rules of Civil Procedure (CR) 53.06(2). After having been served with notice of the filing of the report, any objections to the report must be filed within ten days according to CR 53.06(3). The Supreme Court has held that it is not an abuse of discretion for the trial court to consider untimely objections to a DRC report. Eiland v. Ferrell, 937 S.W.2d 713, 716-17 (Ky. 1997). "The rule of the court is not to disturb a commissioner's report which has been confirmed by the circuit court, unless against the weight of the evidence." Goff v. Blackburn, 299 S.W. 164, 165 (Ky. 1927). If the report is accepted by the court, it then becomes the finding, conclusions, and opinion of the court to the extent that it was adopted. Warner v. Sanders, 455 S.W.2d 552 (Ky. 1970).

The relevant statutory basis for an award of maintenance is found in KRS 403.200 that provides, in part:

- (1) In a proceeding for dissolution of marriage or legal separation . . . 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;

- (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.

In Perrine v. Christine, 833 S.W.2d 825, 826 (Ky.

1992), the Supreme Court stated:

Under this statute, [KRS 403.200] the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts. 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.

In this case, Ollie filed a motion for temporary maintenance on August 11, 2003. The matter was set for a hearing before the DRC and neither the Appellant nor his counsel was present for the hearing to submit any proof on this issue. The circuit court rules clearly allow a party before the DRC to introduce proof, call witnesses, and cross-examine as if the proof were being given before a presiding judge. William contends that the court did not fairly consider his ability to provide for his own reasonable needs in granting the temporary maintenance award. Because William failed to appear at the hearing or offer any proof of his ability, combined with the evidence that was presented to the commissioner and adopted by the court, we find that the award for temporary maintenance was properly set at \$1,406 effective as of April 9, 2003.

William also refers to the DRC's report of December 21, 2004, which states, "Petitioner asserts a claim for maintenance. The Commissioner finds that she has sufficient assets and income to meet her reasonable needs and maintenance

should terminate as of April 8, 2004." William mischaracterizes this finding. At the time this recommendation was made, William was already under a court order to pay temporary maintenance to Ollie. Based on the division of non-marital and marital property and enforcement of the QDRO, the Commissioner found Ollie able to meet her own reasonable needs. Until those orders were adopted by the court, Ollie had no access to any of the liquid assets of the dissolution, and thus the temporary maintenance order was proper.

William next contends that the trial court erred in the division of the marital real estate. The DRC's reports were adopted by the court and thus those findings became the findings of the court. William points the court to Walters v. Walters, 782 S.W.2d 607 (Ky. 1989), which is entirely distinguishable from these facts. Based on the record and findings of the DRC, we see no reason to discuss this case as it simply does not apply to these facts.

William argues that the trial court improperly applied the Brandenburg test for the classification and division of the marital property, and points the Court instead to Travis v. Travis, 59 S.W.3d 904 (Ky. 2001). William presented absolutely no evidence to rebut the classification of the property at issue as marital. Improvements to non-marital property were dealt with specifically and addressed in Brandenburg v. Brandenburg,

617 S.W.2d 871 (Ky.App. 1981), and in that context Brandenburg is properly applied here. It is not the job of the Court of Appeals to consider new evidence that is presented upon appeal. We look to find error or abuse by the trial court. On this issue William's argument is misplaced and we find no error.

William's third contention is that the trial court committed reversible error in finding William owned more than one stock (retirement) account. Based on the record of the trial court and the two reports of the DRC that were adopted by the court, we find that there has been no abuse of discretion or error. The second DRC report provided additional findings to clarify William's accounts and pension. These reports were adopted by the court on October 11, 2005, and we find no reason to disturb this decision.

In a last attempt, William contends that the trial court committed reversible error by not enforcing the Civil Rules or the Bullitt Circuit Court local rules. This Court has reviewed the entire record and series of pleadings in this case. The DRC allowed both parties to file additional evidence and documentation to supplement the record. Both parties filed additional information with the DRC which was then considered for the reports before their adoption. We find no evidence of disregard for the civil or local rules in this case.

The Courts have articulated that "even if there was some doubt in the minds of the court concerning the findings of the lower court, those findings cannot be set aside, since it would require more than just a doubt in our minds to so do. Warner v. Sanders, 455 S.W.2d 552, 554 (Ky. 1970). The findings of the DRC, adopted by the Bullitt Circuit Court, are supported by the evidence of record.

For all the foregoing reasons, we affirm the decision of the Bullitt Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mark E. Edison  
Shepherdsville, KY

BRIEF FOR APPELLEE:

John E. Spainhour  
Elise Givhan Spainhour  
Susan Shimp Torok  
Shepherdsville, KY