

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001484-MR

THERESA BECK

APPELLANT

v.

APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 05-CI-00197

GERALD BECK

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,¹ SENIOR JUDGE.

DIXON, JUDGE: Theresa Beck appeals from an order of the Ohio Circuit Court denying her request for spousal maintenance following the dissolution of her marriage to Gerald Beck. Finding no abuse of discretion by the trial court, we affirm.

Theresa and Gerald were married April 17, 1980, and Gerald filed for divorce in June 2005. Two children were born of the marriage, and both had reached the

¹ Senior Judge J. William Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

age of eighteen before Theresa and Gerald separated. At the time of their separation, Gerald's annual income was approximately \$82,000.00, and Theresa's income was approximately \$27,000.00. Theresa and Gerald accumulated significant debt during their marriage. Once the couple separated, Theresa chose to file for bankruptcy protection. Ultimately, Theresa's half of the marital debt was discharged through bankruptcy. Although Gerald had the opportunity to join Theresa's bankruptcy petition, he chose to forgo bankruptcy and attempt to pay off his half of the marital debt.

A decree of dissolution was entered October 19, 2005, reserving issues relating to marital property, debts, and spousal maintenance for adjudication by the domestic relations commissioner (DRC). Hearings were held before the DRC on March 15, 2006 and April 20, 2006. The DRC issued recommendations resolving the disputed issues and specifically found Theresa was not entitled to spousal maintenance because she was capable of supporting herself through her employment. Theresa filed timely exceptions with the circuit court on the issue of maintenance. On July 5, 2006, the circuit court overruled Theresa's exceptions and adopted the DRC's recommendations as the order of the court. This appeal followed.

Theresa alleges the trial court abused its discretion by denying spousal maintenance. We disagree.

In our review, we are mindful that “maintenance determinations are within the sound discretion of the trial court.” *Platt v. Platt*, 728 S.W.2d 542, 543 (Ky.App. 1987). As such, “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) citing *Platt, supra*. The DRC, as fact-finder, is in the best position to evaluate the weight and credibility of the evidence; consequently, this court will not substitute its judgment for that of the DRC absent clear error. Ky. R. Civ. P. (CR) 52.01; *Perrine v. Christine*, 833 S.W.2d 825, 827 (Ky. 1992).

KRS 403.200 addresses spousal maintenance:

(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 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.

In this appeal, Theresa rehashes the evidence she presented at the hearings and argues that she satisfied both prongs of KRS 403.200(1). However, the record shows that, at the hearing on April 20, 2006, the DRC specifically considered the requirements of KRS 403.200(1) in light of the evidence presented by the parties. Furthermore, the DRC was not obligated to set forth additional findings under KRS 403.200(1)(a), because the DRC had already determined Theresa could support herself through appropriate employment. *Graham v. Graham*, 595 S.W.2d 720, 722 (Ky.App. 1980). Ultimately, the DRC was unconvinced that Theresa required monthly maintenance from Gerald since she held a stable job making nearly \$14.00 per hour.

After our own review of the record, we find the DRC's findings are supported by substantial evidence and not an abuse of discretion.

For the reasons stated herein, the order of the Ohio Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Laura R. Eaton
Hartford, Kentucky

BRIEF FOR APPELLEE

Gerald Beck, *Pro Se*
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