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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001882-MR

PAUL D. WHITEWOOD — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 05-CI-00226

CHERYL A. WHITEWOOD
AND JAMES L. THEISS — APPELLEES

OPINION
AFFIRMING IN PART;
REVERSING AND REMANDING IN PART

** ** ** ** **

BEFORE: NICKELL, STUMBO, AND THOMPSON, JUDGES.

STUMBO, JUDGE: Paul D. Whitewood appeals from an order of the Oldham Family Court arising from an action initiated by Cheryl A. Whitewood to dissolve the parties' marriage. Paul argues that the trial court abused its discretion in failing to order specific visitation times with the parties' youngest child, and in the valuation and division of marital property. He also claims errors in the allocation of debt, the amount and duration of maintenance, the order requiring him to provide life insurance, and the allocation of

attorney fees. For the reasons stated below, we affirm the order on appeal in all respects except for the issue of specific visitation times.

Cheryl and Paul were married in Indiana in 1982. The union produced two daughters who are now in their mid-to-late teens. The parties and their children have resided in at least four states during the course of the marriage, having moved to accommodate Paul's employment. Paul possesses an engineering degree and at the time of filing was employed by Honeywell. He earns approximately $100,000 per year. Cheryl has been employed part-time, and sought to be at home with the children when they were not in school. At the time of filing, she was employed at National City Bank earning approximately $24,000 per year.

Cheryl filed a petition for dissolution of marriage on March 29, 2005, in Oldham Family Court. The proceeding proved contentious, and after proof was taken, the Family Court rendered a series of orders addressing custody, division of assets, maintenance and related matters. The adjudication of these issues culminated in findings of fact, conclusions of law and order rendered February 16, 2006, which disposed of the remaining issues. The court awarded joint custody of the children, with Cheryl serving as primary custodian and Paul awarded visitation of the younger daughter Kaitlyn, then nearly 15 years of age, every other weekend and during a portion of the summer. The order addressed only the remainder of the 2006 calendar year, and provided that thereafter Paul and Kaitlyn would visit with each other by mutual consent. At the time the order was rendered, he lived near Chicago, and the court ordered the parties to

alternate providing transportation to and from Chicago for the visitation. It is noteworthy that the court did not award visitation with the parties' older daughter Brittney. At the time the order was rendered, Brittney was 17 years old and had expressed a desire not to be subject to a visitation order. Because she had almost reached the age of majority, and because of her expressed desire not to see her father, the trial court reluctantly included only Kaitlyn in the visitation order.

The order also divided the parties' marital and non-marital property, including two homes, a 1978 Piper airplane, retirement accounts and a motorcycle. Both parties filed motions to alter, amend or vacate, which the court resolved by an order rendered on August 9, 2006. Though the February 16, 2006, order remained substantially intact, typographical errors were corrected and other minor amendments were made. This appeal followed.

Paul first argues that the trial court abused its discretion in the award of visitation with the parties' youngest daughter Kaitlyn. In establishing visitation, the court noted that Kaitlyn, who was then in the 8th grade, asked that the court limit visitation to once per month in order to accommodate her varied school and extracurricular commitments. To facilitate the scheduling, the court ordered visitation to occur on various dates in 2006. It further held that, "[v]isitation beyond calendar year 2006 will be up to arrangement between Mr. Whitewood and Kaitlyn, cognizant of both of their schedules." It is with this latter provision - i.e., addressing 2007 and beyond - with which Paul takes issue. He contends that the court abused its discretion in failing to order

specific dates and times of visitation, instead leaving the scheduling of visitation to the judgment of his minor child. He seeks an order reversing the award of visitation and remanding it to the trial court for the entry of a specific visitation schedule.

KRS 403.320(1) states,

> A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child. (Emphasis added).

We have examined those portions of the videotaped trial proceedings referenced by Paul in his brief, and are persuaded that he reasonably requested a visitation order which was specific as to the frequency, timing, duration, conditions and method of scheduling. Paul and his counsel used phrases like "the exchanges need to be coordinated" and "specific times" in requesting visitation beyond 2006. This is sufficient to satisfy KRS 403.320(1), and gives rise to the mandatory statutory requirement that the order be specific as to the timing of visitation. As now ordered, it appears that Kaitlyn, who is still a minor, could submit to visitation - if at all - in a manner solely of her choosing. While this is not to say that she would be unreasonable in that regard, the statutory law operates to avail the parties - as well as Kaitlyn - of more definite and predictable visitation scheduling. Accordingly, we reverse on this issue and remand the matter for visitation scheduling in conformity with KRS 403.320(1).

Paul next argues that the trial court abused its discretion in the valuation and division of marital property. He first maintains that the court erred in deducting an anticipated 6% sales commission from net equity in the marital residence. The residence was valued at $266,500, from which the first and second mortgage were deducted leaving the parties' net equity. From that amount, the court deducted what it anticipated would be a 6% sales commission incurred when the parcel was sold. Since the parcel was never sold and Cheryl retained possession of it, Paul argues that the court erred in reducing the parcel's equity (and thus its marital value) by the 6% commission. We note that while the home was valued at more than $266,000, the mortgage totaled nearly $240,000, leaving little equity. With the six percent deduction, the trial court found the net equity to be only $10,887. All of the mortgage debt was assigned to Cheryl.

KRS 403.190 provides that marital property shall be divided in just proportions. It does not require a 50-50 division between the parties. As such, mathematical precision is not required, and the court's deduction of the anticipated 6% commission is not erroneous since the resulting division still comports with KRS 403.190. As such, we find no error.

Paul also maintains that the trial court improperly valued a Harley Davidson motorcycle at Paul's purchase price rather than the estimated value provided by Paul's appraiser. Paul paid $15,125.50 for the motorcycle in January, 2005. Eight months later during the trial proceeding, Paul produced evidence that its value was $10,995. Paul claims that the trial court erred in valuing the motorcycle at the purchase price rather than

the appraisal value, since the court attributed its value to him for purposes of dividing the marital property.

We find no error on this issue. The trial court is vested with discretion in accepting Cheryl's tendered valuation of the motorcycle - which was based on the NADA value - rather than that of Paul's expert. As such, evidence exists in the record upon which the trial court reasonably based its estimate of the motorcycle's value. And as noted above, the court is only required to divide the marital property "in just proportions." Thus, imprecision in the valuation process - if any - is subsumed by the broad discretion granted the court by KRS 403.190.

Paul's third argument is that the trial court erred in its allocation of the parties' marital debt. Specifically, he claims that the court's allocation of a $6,219 credit card debt to him was improper, and directs our attention to *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001) in support of same. *Neidlinger* set forth factors for the court to consider in allocating debt, including the parties' economic circumstances, the participation in creating the debt and the benefits received from the debt. He maintains that the record does not support an allocation of 100% of this debt to him, and seeks an order reversing on this issue.

Paul correctly notes that there is no statutory scheme for allocating debt. *Neidlinger* is helpful, however, and states that in addition to the factors set forth above, the court also may look to the "economic circumstances of the parties bearing on their respective abilities to assume the indebtedness." *Neidlinger*, *supra*. This opinion further

states that there exists no presumption that the debts must be divided equally or in the same proportions as the marital property.

In the matter at bar, it is uncontroverted that Paul earns more than four times the income earned by Cheryl. This fact, taken alone, operates to justify the court's allocation of additional debt to Paul. Furthermore, Cheryl was ordered to pay various debts including an $1,800 National City Visa bill and the mortgages previously discussed. In sum, there is no basis for concluding that the trial court's allocation of debt ran afoul either of *Neidlinger* or general principles of equity, and as such we find no error.

Paul's fourth argument is that the court erred in the duration and amount of maintenance it awarded to Cheryl. The court awarded maintenance in the amount of $750 per month until May, 2016. Paul claims that this award constitutes an abuse of discretion because Cheryl was awarded the marital residence, $30,000 in retirement funds, was allocated little debt and earns $24,000 per year. He argues that she has sufficient property to meet her reasonable needs, and that the court erred in failing to so rule.

KRS 403.200 states,

> (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, 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.
>
> (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, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
> (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.

The trial court expressly examined these factors in determining that Cheryl was entitled to an award of maintenance in the amount of $750 per month for approximately 10 years. In its findings of fact, the court noted Cheryl's income and other financial resources, including marital property apportioned to her, the standard of living during the marriage, the duration of the marriage, and Paul's ability to pay maintenance while meeting his own needs. This analysis was sufficient to satisfy KRS 403.200, and was supported by competent evidence of record. Accordingly, we find no error. Similarly, we find no basis for altering the effective date of the maintenance and child support award.

Paul further argues that the trial court abused its discretion in requiring him to maintain life insurance while also paying maintenance and child support. The court ordered Paul to maintain $100,000 in life insurance for the time period he owed child support, and an additional $50,000 in coverage for the time period he owed maintenance. The trial court has broad discretion in requiring a party to maintain insurance for the duration of a child support obligation, *Graham v. Graham*, 595 S.W.2d 720 (Ky.App. 1980). Paul has offered little in support of his claim of error on this issue, and again we find no basis for altering the order on appeal as it relates to this issue.

Paul's final argument is that the trial court abused its discretion in its award of attorney fees and costs. The court ordered Paul to pay $8,000 of the $10,000 owed by Cheryl for attorney fees, and 80% of the cost incurred to appraise the airplane. He maintains that these awards were not supported by the record because Cheryl has sufficient assets to pay these fees and costs, and because he had to file motions for contempt arising from Cheryl not permitting visitation and access to personal property.

KRS 403.220 provides that the trial court may award reasonable attorney fees after considering the financial disparity of the parties. Though Cheryl receives maintenance and child support, she continues to earn one-fourth of Paul's income and has a diminished standard of living relative to that enjoyed during the marriage. When considering all of the facts, we cannot conclude that the court abused its discretion in awarding the attorney fees and costs to Cheryl. We find no error.

For the foregoing reasons, we reverse and remand the order on appeal as it relates to Paul's visitation with Kaitlyn, and in all other respects affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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