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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000937-MR
AND
NO. 2006-CA-000946-MR

WILLA A. CARROLL — APPELLANT/CROSS-APPELLEE

v.

APPEAL AND CROSS-APPEAL FROM BOONE CIRCUIT COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 05-CI-01025

MELVYN D. CARROLL — APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

STUMBO, JUDGE: Willa A. Carroll appeals and Melvyn D. Carroll cross-appeals from an order of the Boone Family Court establishing maintenance payable to Willa in the amount of $1,000 per month for one year, followed by $500 per month for 14 years. Each party argues that the award constitutes an abuse of discretion meriting reversal. For the reasons stated below, we affirm the order on appeal.

Willa and Melvyn ("Mel") were married on August 8, 1968. On June 14,

2005, Willa filed a petition in Boone Circuit Court seeking to dissolve the marriage. Willa was a retired school teacher, and Mel a retired school administrator. They filed a Partial Property Settlement Agreement on January 4, 2006, reserving other issues for later adjudication.

After proof was taken, the Boone Family Court rendered findings of fact, conclusions of law and order on January 9, 2006. The court found, in relevant part, that Mel had a monthly retirement income of approximately $5,603.00, and Willa a retirement income of $1,152.00. The parties owned a home in Florence, Kentucky, and a retirement condominium in West Bradenton, Florida, each of which were mortgaged. Willa now resides at the Florida condominium. Willa was awarded a non-marital Scudder Investment account valued at $41,000, plus $65,000 representing half of a marital American Scandinavian account. Mel also received about $65,000 from the American Scandinavian Account.

The court also found that while Willa believed herself to be emotionally incapable of working, that she did not provide any medical proof to substantiate the claim. She testified that she had a Master's Degree and could substitute teach if she became certified in the state of Florida. Mel's monthly income included $539 per month as a Florence city counsel member, and he stated that he did some substitute teaching.

The parties also testified as to their anticipated monthly expenses. Willa believed her expenses would be $3,560.00 per month. She stated that Mel had been giving her $720.00 per month, and that even when combined with her retirement income

she was going into debt using credit cards to pay living expenses. Mel introduced an e-mail from Willa to her attorney stating that her monthly expenses were $1,547.00. Mel testified that his monthly expenses were $4,717.00, which Willa did not dispute.

Under the property settlement agreement, Mel received the Kentucky residence and Willa received the Florida condominium, with other marital assets approximately equalizing the equity. The Family Court ordered Mel to pay to Willa maintenance in the amount of $500.00 per month for 15 years. Willa subsequently filed a motion to alter, amend or vacate the maintenance order. Upon considering the motion, the Family Court amended the order and required Mel to pay to Willa $1000 per month for one year, followed by $500 per month for 14 years. In amending the order, the Court noted that Willa was in need of the extra funds for a period of one year in order to give her time to receive her teaching certificate from the state of Florida. This appeal followed.

Willa now argues that the amended award of maintenance is grossly inadequate and not supported by the facts. She directs our attention to the maintenance elements set forth in KRS 403.200(2), and claims that, when applied to the facts at bar, they support a finding that she did not receive adequate maintenance. She notes that Mel earns the majority of the parties' combined incomes, that they chose for her to forgo several years of earnings to raise a child, that she received less than $100,000 in marital assets, and that she will be even worse off financially when the maintenance ends at about age 75, at which time she will likely be unable to support herself through additional

employment. In sum, she points to the disparity in their post-dissolution incomes and lifestyles, and maintains that the award constitutes an abuse of discretion and should be reversed.

Mel cross-appeals. He agrees that the award constitutes an abuse of discretion and should be reversed, but cites other reasons. Mel contends that the maintenance award is excessive in both amount and duration because Willa is capable of meeting her own needs without maintenance. He notes that she has investment assets of approximately $100,000 (that sum including the non-marital Scudder account), and the ability to earn income through employment. He points out that she has a Master's Degree and 20 years of teaching experience. Ultimately, he argues that Willa chose to retire early and now chooses not to work, and that given the totality of the facts she is not entitled to maintenance under the factors set forth in KRS 403.200(2).

We have closely examined the record and the law, and find no error in the award of maintenance. As the parties are well aware, KRS 403.200 states that,

> (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.

In establishing maintenance, the court must find that the amount and duration are proper and just by looking to all of the relevant statutory factors. *Weldon v. Weldon*, 957 S.W.2d 283 (Ky.App. 1997); *Atwood v. Atwood*, 643 S.W.2d 263 (Ky.App. 1982).

In the instant case, the Family Court undertook a comprehensive analysis of the statutory factors and their application to the facts. In keeping with the legislative requirement, it examined the parties' financial resources, including their retirement income and other assets, as well as the time required for Willa to earn a Florida teaching certificate; their standard of living, both before and after the dissolution; the 37-year duration of the marriage; Willa's age, and physical and emotional condition; and Mel's ability to meet his needs while meeting those of Willa. And as required by *Weldon*, this analysis was done in a manner fashioned to insure that the amount and duration of the award were just.

An award of maintenance rests within the sound discretion of the trial court, and will not be disturbed absent a showing that the findings of fact were clearly erroneous or that the court abused its discretion. *Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992); CR 52.01. "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004). Abuse of discretion in relation to the exercise of judicial power implies either arbitrary or an unreasonable and unfair decision. *Kentucky National Park Commission ex rel. Commonwealth v. Russell*, 191 S.W.2d 214 (Ky. 1945).

Willa and Mel each acknowledge the difficulty of proving an abuse of discretion, and our review of the order on appeal uncovers none. It is not enough to merely allege that the evidence supported a different result; rather, the parties must meet the burden of demonstrating that the trial court abused its discretion. *Perrine*, *supra*. While Willa and Mel have each shown that evidence could have reasonably supported an award greater than or less than that actually rendered, neither has demonstrated that the award was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Sexton*, *supra*. Accordingly, we find no error.

For the foregoing reasons, we affirm the order of the Boone Family Court.

ALL CONCUR.

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CROSS-APPELLEE:

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