

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001045-MR

JACK DEMPSEY TEETS

APPELLANT

v. APPEAL FROM GREEN CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 03-CI-00136

MARILYN LOUISE TEETS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; ACREE AND THOMPSON, JUDGES.

ACREE, JUDGE: Jack Dempsey Teets appeals from an order of the Green Circuit Court in a dissolution of marriage action. Finding no error, we affirm.

Jack and Marilyn Teets were married on October 2, 2002, and separated on September 7, 2003. During the marriage, the parties resided in a double wide mobile home that was purchased by Jack shortly before the marriage.

The trailer was located on a parcel of land that was titled to Marilyn prior to the parties' marriage.

Marilyn earned approximately \$300.00 each month in income, received \$554.00 each month in Social Security Disability benefits, and received \$280.00 per month in child support for two children from a prior marriage. In 2003, Jack reported income of \$62,099.00, which was made up of \$42,490.00 he earned as a truck driver and \$19,524.00 he drew from his military retirement. During the marriage the parties purchased a 2003 Chevrolet pick-up truck for \$45,000.00.

In February of 2004, Jack filed for bankruptcy and his marital and non-marital debts were included. Although Jack's debts were discharged, several debts were left valid and collectible against Marilyn, including \$1,200.00 owed to Harold Shirley for construction projects, \$4,850.00 owed to Greensburg Deposit Bank for a lawnmower, and \$2,119.26 owed to Daimler Chrysler after the Chevrolet pick-up was repossessed.

After their separation, but before the filing of bankruptcy, Jack purchased a 2000 Chevrolet Corvette. Jack claims he purchased the Corvette for \$38,363.00. At the time of the final hearing in May 2005, Jack owed approximately \$22,918.53 on the Corvette and the car's NADA value was \$24,575.00. Jack contends he used \$10,000.00 of nonmarital funds and traded in a nonmarital car as payment on the Corvette.

This case came before the Green Circuit Court for a final hearing on May 10, 2005. The parties agreed to equally divide all of the marital property totaling \$4,200.00. They agreed as well that Jack would pay Marilyn \$4,084.63 to cover his half of the marital debts. In its March 7, 2007, judgment, the trial court further ordered Jack to pay Marilyn \$828.44 for her share of marital equity in the 2000 Corvette and \$400.00 per month for a period of 24 months in spousal maintenance.

On April 21, 2007, the trial court denied Jack's motion to alter, amend or vacate its judgment. This appeal followed.

In dissolution actions, our review is bound by procedural rules and statutory and decisional law. According to Kentucky Rules of Civil Procedure (CR) 52.01, we must defer to the trial court's findings of fact unless they are clearly erroneous; that is, not supported by substantial evidence. And, we must give due deference to the trial court's opportunity to judge the credibility of witnesses. So, when there is a conflict in the evidence, the trial court, not this Court, has the responsibility to decide what evidence to believe. *See Ghali v. Gahli*, 596 S.W.2d 31 (Ky.App. 1980); *Adkins v. Meade*, 246 S.W.2d 980 (Ky. 1952).

Trial courts have very broad discretion to fashion a fair and appropriate remedy which is specific to the particular action since no two dissolution actions are alike. Additionally, we may only reverse a trial court's decree if the trial court has abused its considerable discretion. *Cochran v. Cochran*, 746 S.W.2d 568, 570 (Ky.App. 1988). This Court, as an appellate court,

exists to correct errors of law made by lower courts, not to provide the parties with a *de novo* review of contested issues.

First, Jack challenges the trial court's conclusion that he failed to produce sufficient proof to trace a nonmarital contribution when he purchased the Corvette. Jack further disagrees with the trial court awarding Marilyn half of the equity in the car.

Jack admitted at the final hearing that he was unable to trace the equity in the Corvette. He submitted an installment contract/security agreement with Bank One for the purchase of the Corvette which indicated he paid \$10,000.00 in cash as a down payment and that there was a trade-in allowance of \$6,000.00 for a Chevrolet Monte Carlo. However, Jack was unable to produce evidence proving the nonmarital nature of these funds and the trial court noted the testimony of Jack relating to the car was not believable.

Having fully reviewed the record before us and the video of the final hearing, we agree with the trial court and find no abuse of discretion in his determination that the equity in the Corvette should be treated as marital and be evenly divided between the parties.

Next, Jack contests the trial court's award of spousal maintenance for Marilyn. The decision to grant or deny a maintenance award lies within the trial court's sound discretion in the application of Kentucky Revised Statute (KRS) 403.200. *See Leveridge v. Leveridge*, 997 S.W.2d 1, 2 (Ky. 1999). We will only reverse an award of maintenance if we find that the trial court abused its discretion

or based its decision on findings of fact that are clearly erroneous. *See Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992). “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, 272 (Ky. 2004), *citing Commonwealth v. English*, 993 S.W.2d 941 (Ky. 1999).

KRS 403.200 outlines the following conditions governing maintenance awards:

(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.

Where a former spouse is not able to produce enough income to meet his or her reasonable needs, it is appropriate to award maintenance. *Calloway v. Calloway*, 832 S.W.2d 890, 894 (Ky.App. 1992). In awarding Marilyn \$400.00 per month for 24 months, the court took into consideration Marilyn's circumstances after 11 months of marriage to Jack. Marilyn maintained her income. However, due to the repossession of her home, she was forced to buy a new one. She also was left responsible for the marital debts that had been apportioned to her due to Jack's bankruptcy. The trial court properly took into consideration the assignment of property pursuant to KRS 403.190 and the factors delineated in KRS 403.200 before awarding maintenance. The findings of the trial court are supported by substantial evidence; thus, we find no abuse of discretion in awarding this amount of maintenance to Marilyn.

We further find Jack's argument that Marilyn's counsel waived her request for maintenance during the final hearing to be unconvincing. After

reviewing the videotaped hearing, we disagree with Jack's version of the events and believe the issue was left to the trial court's discretion.

For the foregoing reasons, the order of the Green Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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