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Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001594-ME
AND
NO. 2007-CA-002251-ME

PAIGE RABE

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 05-CI-03138

CHRISTOPHER RABE

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * * * *

BEFORE: ACREE, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Paige Rabe brings Appeal No. 2007-CA-001594-ME from a July 6, 2007, Findings and Conclusions, and brings Appeal No. 2007-CA-002251-ME from an October 11, 2007, Order of the Kenton Circuit Court dissolving the parties' marriage, awarding custody of the parties' child, setting child support, and

disposing of marital and nonmarital property. We affirm in part, reverse in part, and remand.

Paige and Christopher Rabe were married November 29, 2003, and divorced by decree of dissolution of marriage entered in the Kenton Circuit Court on July 6, 2007. One child, Layne E. Rabe, was born of the marriage. During the marriage, Christopher was the sole owner and operator of CRX Transportation, LLC (CRX). CRX provided Christopher with an income of \$350,000 to \$400,000 per year. Paige has a Master's Degree in Education and had previously been employed as a teacher; Paige stayed home during the marriage to care for the parties' child.

During the dissolution proceedings, there was substantial dispute between the parties concerning child custody, child support, and disposition of marital and nonmarital property. After hearing considerable evidence, the circuit court entered its Findings and Conclusions on July 6, 2007. Therein, the circuit court awarded the parties joint custody of Layne and designated Paige primary residential custodian. Christopher was awarded visitation and ordered to pay child support of \$1,225 per month. The court also allocated certain nonmarital property to each party and divided the parties' marital property. Believing the circuit court erred upon myriad issues, Paige brings these appeals.¹

Paige initially contends that the circuit court erred by awarding the parties joint custody of their minor child, Layne. Paige alleges that the circuit

¹ By a November 20, 2007, order of this Court, Appeal Nos. 2007-CA-001594-ME and 2007-CA-002251-ME were consolidated for appellate review.

court failed to make findings of fact concerning the best interests of Layne and specifically failed to make findings of fact concerning whether Christopher's acts of domestic violence affected Layne.

Appellate review of a child custody determination focuses upon whether the circuit court's findings of fact are clearly erroneous. *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003); *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). Of course, a circuit court's application of the law to the facts is reviewed *de novo*. *Allen v. Devine*, 178 S.W.3d 517 (Ky.App. 2005).

Kentucky Rules of Civil Procedure (CR) 52.01 is applicable to custody determinations and provides, in relevant part:

In all actions tried upon the facts without a jury . . .
the court shall find the facts specifically and state
separately its conclusions of law

The primary reason that CR 52.01 requires the circuit court to make specific findings of fact is to provide a basis for adequate appellate review. *Reichle*, 719 S.W.2d 442. However, a circuit court's failure to make adequate findings of fact must be brought to the court's attention by a motion for more definite findings under CR 52.04 or the error is considered waived. *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982). This is distinguished from a case where the circuit court fails to make any findings of fact upon an issue, which results in reversible error regardless of a CR 52.04 motion. *Brown v. Shelton*, 156 S.W.3d 319 (Ky.App. 2004).

In the case at hand, the circuit court failed to make any findings of fact concerning the best interests of Layne when determining child custody. In fact, the court failed to even make the conclusory finding that joint custody was in Layne's best interests. Additionally, the circuit court did not make specific findings concerning the relevant factors necessary to determine the best interests of the child as delineated in KRS 403.270(2). In short, the circuit court neglected to set forth any findings of fact as to Layne's best interests. We regard such a complete omission as reversible error. Upon remand, the circuit court shall reconsider its award of custody and shall make specific findings of fact and conclusions of law as to the best interests of the child in conformity with KRS 403.270.² We further regard Paige's contention of error as to visitation to be moot considering our reversal of the circuit court's child custody determination. *See* KRS 403.320.

Paige next contends the circuit court erred by failing to deviate from the child support guidelines in calculating Christopher's monthly child support obligation. Paige points out that Christopher's gross income totals more than \$30,000 per month; thus, his income "would be approximately \$15,000 in monthly income over the guidelines."

The child support guidelines of this Commonwealth are codified in Kentucky Revised Statutes (KRS) 403.212. KRS 403.211(2), specifically provides

² We also note that Kentucky Revised Statutes (KRS) 403.270 would require the court to consider the allegation of domestic violence and, if proven, its impact upon the child in awarding custody.

that the guidelines are to “serve as a rebuttable presumption for the establishment or modification of the amount of child support.” KRS 403.211(2); *Downing v. Downing*, 45 S.W.3d 449 (Ky.App. 2001). Under KRS 403.211(2), the circuit court may deviate from the child support guidelines upon making a “written finding” that the guidelines’ application to a particular case would be unjust or inappropriate. An appropriate adjustment of a guideline award may be made based upon the existence of one of seven criteria found in KRS 403.211(3).

As an appellate court, we defer to the circuit court’s discretion in setting the amount of child support. *See Downing*, 45 S.W.3d 449. The Court of Appeals will not reverse the circuit court’s decision upon child support “[a]s long as the trial court’s discretion comports with the guidelines, or any deviation is adequately justified in writing.” *Id.* at 454. A circuit court’s decision on child support would constitute an abuse of discretion only if it is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Id.* at 454.

In this case, it is uncontroverted that Christopher’s monthly gross income well exceeded the upper level of the guidelines’ income table. In its July 6, 2007, Findings and Conclusions, the circuit court found that Christopher’s income “ranges between \$350,000.00 to \$400,000.00 per year [which] clearly places the parties beyond the child support guidelines contained in KRS 403.212.” In her brief, Paige mainly focuses her argument upon the fact that Christopher’s monthly gross income exceeded the guidelines and that the circuit court erred by failing to deviate from the guidelines. She devotes only one sentence to the argument that

“her family’s expenses, lifestyle, and needs” also justify deviation from the guidelines.

The mere fact that a parent’s monthly income exceeds the upper level of the child support guidelines’ income table does not require the circuit court to deviate from the guidelines. *Downing*, 45 S.W.3d 449. Rather, in a case where the parent’s monthly income exceeds the guidelines, the decision to deviate and set the amount of child support above the guidelines must be based upon the “reasonable needs” of the child. *Id.* at 456. In defining this concept, the Court of Appeals has noted its fluidity and focused upon several factors bearing upon “reasonable needs:”

Factors which should be considered when setting child support include the financial circumstances of the parties, their station in life, their age and physical condition, and expenses in educating the children. The focus of this inquiry does not concern the lifestyle which the parents could afford to provide the child, but rather it is the standard of living which satisfies the child's reasonable and realistic needs under the circumstances. Thus, while a trial court may take a parent's additional resources into account, a large income does not require a noncustodial parent to support a lifestyle for his children of which he does not approve.

Id. at 457 (citations omitted).

In the case *sub judice*, the circuit court specifically concluded “there is a lack of evidence as to any needs of the child that would require the Court to order [Christopher] to pay beyond the maximum amount called for in the Guidelines.” Likewise, in her brief, Paige has failed to identify any evidence in the record

demonstrating that the child's reasonable needs require deviation from the child support guidelines. Consequently, we hold that the circuit court did not abuse its discretion by failing to deviate from the child support guidelines in setting child support.

Paige also argues that the circuit court erred by awarding Christopher a nonmarital interest in the home on Prestwick Drive and in the home on Woodlyn Hills. The Prestwick Drive home was purchased during the marriage and served as the parties' primary marital residence. As to this property, the record indicates that Christopher initially paid \$221,902 toward the purchase. This money originated from two Fifth Third checking accounts, Account Nos. 3882 and 7968.³ The home on Woodlyn Hills was purchased by Paige prior to the marriage and served as her premarital residence. As to this home, the record reveals that during the marriage Christopher paid off the mortgage on this property in the amount of \$167,391; this money was directly taken from Account No. 7968, after a substantial deposit into that account from Account No. 3882.

Both Fifth Third checking accounts were in Christopher's name and were only accessible by Christopher, even after the parties were married. Account No. 3882 was opened prior to the marriage and had a balance of \$690,000 immediately preceding the marriage. Account No. 7968 was opened during the marriage with a deposit of \$374,532. The \$374,532 was taken from a closed

³ The payment of \$221,902 was actually comprised of \$84,083 paid at closing from Fifth Third Account No. 3882 and of \$137,819 from a second mortgage. The second mortgage was subsequently paid off with proceeds from Account Nos. 3882 and 7968.

securities account; the securities account had been funded with a deposit from funds withdrawn from Account No. 3882.

In allocating Christopher a nonmarital interest in the marital home on Prestwick Drive and in Paige's premarital home on Woodlyn Hills, the circuit court specifically stated:

Despite the voluminous records and the numerous transactions undertaken by [Christopher] with his financial accounts, this Court is satisfied and finds that a substantial part of the pre-marital balance of \$690,000.00 can be traced to marital property. Specifically, the Court finds that \$221,902.00 was paid towards the purchase of the residence on Prestwick Drive and \$167,000.00 was paid to retire the mortgage on [Paige's] home on Woodlyn Hills Drive. As a result, those accounts will be restored to [Christopher] as his non-marital property.

[Christopher] will be awarded his bank account with Fifth Third, Account No. XXX-7968.

It is clear that the circuit court treated the payments of \$221,902 toward the purchase of the marital residence on Prestwick Drive and of \$167,391 toward the mortgage on Paige's premarital home on Woodlyn Hills as nonmarital contributions by Christopher. For the reasons hereinafter stated, we conclude that the circuit court erred by characterizing the payments of \$221,902 and \$167,391 as Christopher's nonmarital contributions; instead, we hold that these payments should be properly characterized as payments from marital funds. Because of the convoluted record in this case, we will address the payments on these properties in detail.

To properly allocate and divide property in a dissolution of marriage proceeding, the court must: (1) classify the property as marital or nonmarital, (2) assign each party his/her nonmarital property, and (3) divide marital property in just proportions. KRS 403.190; *Hunter v. Hunter*, 127 S.W.3d 656 (Ky.App. 2003). The classification of property as marital or nonmarital is not open to the circuit court's discretion but, rather, is a question of law. *Heskett v. Heskett*, 245 S.W.3d 222 (Ky.App. 2008); *Jones v. Jones*, 245 S.W.3d 815 (Ky.App. 2008); *Holman v. Holman*, 84 S.W.3d 903 (Ky. 2002). And, our review proceeds *de novo*. *Holman*, 84 S.W. 3d 903; *Heskett*, 245 S.W.3d 222. On the other hand, the division of marital property is left to the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of that discretion. *See Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001).

In this Commonwealth, there exists a statutory presumption that all property acquired during the marriage is marital. KRS 403.190(3). This presumption may be rebutted by the party claiming a nonmarital interest. KRS 403.190(3). The party claiming a nonmarital interest carries the burden of proof. Such burden must be proven by clear and convincing proof that the property is nonmarital. *Terwilliger v. Terwilliger*, 64 S.W.3d 816 (Ky. 2002); *Browning v. Browning*, 551 S.W.2d 823 (Ky. 1977).

In this case, the marital home on Prestwick Drive was acquired during the marriage; thus, there exists a statutory presumption that the home is marital property. However, the circuit court found that Christopher's payment from Fifth

Third Account No. 3882 in the amount of \$221,902 was from nonmarital funds. In so finding, the circuit court concluded that Christopher had “traced” this payment to his “pre-marital balance of \$690,000.00” in the Fifth Third account.

The Kentucky Supreme Court has recently defined tracing as “[t]he process of tracking property’s ownership or characteristics from the time of its origin to the present.” *Sexton v. Sexton*, 125 S.W.3d 258, 266 (Ky. 2004)(citing *BLACK’S LAW DICTIONARY 1499 (7th ed. 1999)*). It has been observed that tracing is a judicially created concept arising from the marital property presumption of KRS 403.190(3). *Id.* To successfully rebut the marital property presumption and trace a nonmarital property interest, a party must: (1) identify the property acquired during marriage in which he/she asserts a nonmarital interest, and (2) trace or track the nonmarital interest back to a specific nonmarital asset.

Here, Christopher adequately traced the \$221,902 payment toward the purchase of Prestwick Drive to Fifth Third Account Nos. 3882 and 7968.

However, during trial, Christopher testified that income he earned during the marriage was routinely deposited into Account No. 3882. Moreover, the evidence clearly demonstrates that such income was also either directly or indirectly deposited into Account No. 7968.

It is well-established that income earned during marriage is generally marital property. *See Dotson v. Dotson*, 864 S.W.2d 900 (Ky. 1993). Thus, it is clear that both Fifth Third checking accounts contained marital and nonmarital funds that were comingled. As the burden was placed solely upon Christopher to

demonstrate his nonmarital property interest by clear and convincing evidence, we think Christopher failed to adequately prove that the Fifth Third checking accounts were purely nonmarital or that the \$221,902 paid toward the purchase of the marital residence on Prestwick Drive was solely derived from his nonmarital funds of \$690,000. Stated differently, Christopher traced the payment of \$221,902 during the marriage to the Fifth Third accounts, but the accounts contained both marital and nonmarital funds that were comingled. As such, it was then incumbent upon Christopher to prove that the \$221,902 was taken solely from the nonmarital funds of \$690,000. This he failed to do.

Similarly, Christopher failed to adequately trace his payment of \$167,391 on the mortgage of Paige's premarital home on Woodlyn Hills. Like the marital residence, this payment was made during the marriage and was directly taken from Account No. 7968, after a transfer of funds from Account No. 3882. As the payment of \$167,391 was made during the marriage, there exists a presumption that it was from marital funds and Christopher carries the burden to rebut said presumption. *See Travis v. Travis*, 59 S.W.3d 904 (Ky. 2001). *Allison v. Allison*, 246 S.W.3d 898 (Ky. 2008). As hereinbefore stated, both Fifth Third accounts contained marital funds in the form of substantial income Christopher earned during the marriage. As such, the Fifth Third accounts were comingled with both marital and nonmarital funds. While Christopher traced his payment of \$167,391 directly to Account No. 7968 and indirectly to Account No. 3882, he

failed to prove that this payment was solely derived from nonmarital funds in the accounts.

In sum, we are of the opinion that the payments of \$221,902 and \$167,391 made during the marriage for the benefit of the Prestwick Drive and Woodlyn Hills properties constituted payments from marital property, and not nonmarital contributions as erroneously concluded by the circuit court. On remand, the circuit court shall divide the marital property pursuant to KRS 403.190, in light of our ruling on the payments made for the benefits of the Prestwick Drive and Woodlyn Hills properties during the marriage.

Paige also alleges that the circuit court erred in awarding Christopher “certain credits for mortgage payments, taxes, and insurance made” upon the marital home on Prestwick Drive after entry of the decree of dissolution. In its Findings and Conclusions, the circuit court held:

Effective August 1, 2007, if [Paige] continues to reside in the home at Prestwick Drive pending sale of the property, [Christopher] will be given credit for mortgage, insurance, and tax payments made. Reimbursement for these amounts will be made out of the sale proceeds.

In effect, the circuit court awarded Christopher a “credit” for the mortgage payments, taxes, and insurance paid after entry of the decree. To the extent that the circuit court ordered a dollar-for-dollar credit for mortgage payments, taxes, and insurance paid by Christopher, the court erred. Christopher is only entitled to a “credit” equal to the sum that the mortgage payments reduced the principal mortgage indebtedness for the marital home on Prestwick Drive. *See Gibson v.*

Gibson, 597 S.W.2d 622 (Ky.App. 1980); *Drake v. Drake*, 809 S.W.2d 710 (Ky.App. 1991). Hence, we are of the opinion that the circuit court erred by awarding Christopher a dollar-for-dollar credit for the mortgage, taxes, and insurance payments made after entry of the decree. Rather, Christopher shall only be entitled to receive credit for those payments to the extent the payments reduced the principal mortgage indebtedness.

Paige next argues that the circuit court erred by awarding Fifth Third Account No. 7968 to Christopher as his nonmarital property. The record reveals that Account No. 7968 was opened during the marriage with funds from a securities account, which was funded by a deposit from Fifth Third Account No. 3832.⁴ As hereinbefore stated, both marital and nonmarital funds were deposited into Account No. 7968. As such, Account No. 7968 is not a purely nonmarital asset. As it was opened during marriage, there exists a presumption that the account is marital property and the burden is upon Christopher to rebut the presumption. *See Travis*, 59 S.W.3d 904; *Allison*, 246 S.W.3d 898. Christopher offers no evidence, by accounting or otherwise, to prove or separate the nonmarital portion of the account from the marital portion. Since Christopher has failed to rebut the statutory presumption that Account No. 7968 is marital property, we conclude the circuit court erred by awarding this account to Christopher as his nonmarital property. Rather, we hold that Account No. 7968 constitutes marital property. Upon remand, the circuit court shall determine its value as of the date of

⁴ A deposit of \$374,532 was made to open Account No. 7968. We also note that Account No. 3882 was closed by Christopher during the marriage.

entry of decree of dissolution of marriage and shall divide it in just proportions in accordance with KRS 403.190(1).

Paige additionally contends that the circuit court erred by failing to classify funds in the US Bank checking account as marital property. The circuit court concluded that the “account balance is part of the business which has been separately valued as part of [the] marital property” and that Paige was awarded one-half of the increased value of CRX. The circuit court did not, however, separately value or divide the US Bank account.

The record reveals that the US Bank account was in the name of CRX and was used for business purposes. Moreover, Paige’s own expert witness included the US Bank account in his valuation of CRX. Upon the whole, we do not believe the circuit court erred in its classification and division of the US Bank account as part of CRX.

Paige also argues that the circuit court erred in its valuation of CRX. Christopher owned and operated CRX prior to the marriage and is the sole owner of that business. During trial, both Paige and Christopher offered expert testimony concerning CRX’s value and, more specifically, concerning the increase in value of CRX during the marriage. Paige’s expert opined that during the marriage CRX increased in value by \$461,856. Conversely, Christopher’s expert opined that CRX only increased in value by \$148,718 during the marriage.

The circuit court viewed the approach utilized by Christopher’s expert as “more accurate.” However, the circuit court slightly modified the approach by

using an earnings multiplier of two (rather than one) and by not discounting CRX's value by a 10 percent broker's fee. Under this modified approach, the circuit court determined that CRX increased in value by \$204,937 during the marriage.

Paige specifically maintains that the circuit court erred by relying upon the opinion of Christopher's expert to value CRX. Paige states that the valuation of CRX by Christopher's expert was flawed because:

[T]he false representation of [Christopher] to the valuator to [Christopher's] business had a single customer that made up nearly 80% of the company's business and that without this one customer the business would "fold." This is inaccurate. Additionally, [Christopher's] expert was not aware that [Christopher] had a sales agency agreement with Target Logistics and that [Christopher] has many customers that he supplies under this contractual sales agency. . . . (Citations omitted.)

In this Commonwealth, there does not exist a "single best method" or approach for the valuation of a corporation in an action for dissolution of marriage. *Clark v. Clark*, 782 S.W.2d 56 (Ky.App. 1990). As an appellate court, our role is limited to determining whether the circuit court's approach "reasonably approximated the net value" of the corporation. *Id.* at 59. And, the circuit court's valuation is a question of fact, which will only be disturbed on appeal if clearly erroneous. CR 52.01; *Lane v. Lane*, 202 S.W.3d 577 (Ky. 2006); *Brunson v. Brunson*, 569 S.W.2d 173 (Ky.App. 1978). A finding of fact is clearly erroneous if it is not supported by substantial evidence. Substantial evidence is defined as "evidence, when taken alone or in light of all the evidence, which has sufficient

probative value to induce conviction in the mind of a reasonable person.” *Hunter v. Hunter*, 127 S.W.3d at 659.

During his testimony, Christopher’s expert stated that he did not independently investigate the facts underlying his opinion as to the value of CRX. Instead, Christopher’s expert relied upon CRX’s tax returns and information supplied by Christopher concerning CRX’s operations. Relevant to this appeal, it was the expert’s testimony that some 60 - 80 percent of CRX’s business was generated by a single customer, Target. Moreover, it was the expert’s belief that this one customer (Target) could terminate its business with CRX upon giving thirty days notice. Because up to 80 percent of CRX’s business was with one customer who could unilaterally terminate the business relationship, Christopher’s expert opined that CRX’s existence was “fragile” and ultimately utilized a low earnings multiplier of one.

As pointed out by Paige and later evidenced by Christopher’s testimony, Christopher’s expert was mistaken concerning the business relationship between CRX and Target. Rather than Target being CRX’s largest customer, Christopher testified that CRX was an “agent” of Target pursuant to a franchise agreement. Under this agreement, Target supplied no business to CRX; CRX generated all of its business independently. CRX’s business relationship with Target simply enabled CRX to obtain lower air-freight rates. Christopher also testified that Target would ordinarily bill CRX’s customers directly and thereafter remit a percentage of that amount to CRX.

It is clear that Christopher's expert possessed a mistaken understanding of CRX's business operations and, in turn, relied upon patently inaccurate information to form the basis of his opinion upon CRX's value. An expert's opinion that is based upon patently inaccurate and erroneous facts cannot constitute substantive evidence of a probative value. Indeed, such spurious expert opinion could not induce conviction in the mind of a reasonable person.

In this case, the circuit court relied upon the opinion of Christopher's expert in its valuation of CRX but slightly deviated therefrom by utilizing an earnings multiplier of two and by eliminating a broker's fee. The circuit court, however, failed to make any findings of fact concerning the reason for its deviation from the expert's valuation, including the court's application of an earnings multiplier of two. As the valuation of Christopher's expert was based upon inaccurate information and, thus, lacking in probative value, the circuit court's reliance upon this expert's valuation was error in the absence of specific findings justifying reliance thereupon. Stated differently, if a circuit court elects to rely upon expert opinion founded upon inaccurate, mistaken, or false facts, it must set forth the reasons justifying such reliance in specific findings of fact. Upon remand, the circuit court shall reconsider its valuation of CRX. If it chooses to again rely upon the valuation of Christopher's expert, it shall set forth specific findings of fact justifying such reliance, taking into consideration the matters addressed by this Court above.

Paige next argues that the circuit court erred by failing to invoke the equitable doctrine of unclean hands in its division of marital property. In particular, Paige maintains:

[Christopher] has “unclean hands” due to his dissipation of material assets, his concealment of marital assets, overstated and fabricated liabilities, his fraudulently filed affidavit, and his under reporting of income to the IRS. The actions of [Christopher] bar any relief under the clean hands doctrine. . . .

. . . .

[Christopher] underreported his income, liquidated marital assets to pay back non-marital taxes in an attempt to prevent [Paige] from acquiring her equitable share of the marital assets. He should not be allowed to benefit from his wrongdoing. This is directly related to the liquidation of the marital certificates of deposit in the amount of \$350,000.00. [Christopher] had these marital monies stored in certificates of deposit, and when he amended his tax returns, he liquidated some of the certificates of deposit and secured loans collateralized by other certificates of deposit to pay the non-marital tax liabilities. When the remaining certificates of deposit matured, he paid off the non-marital loans. [Paige] was not given a set off or credit for her marital interest in these monies that are clearly a [sic] marital assets. Dividing property in the instant case requires the court to invoke the clean hands maxim. (Citations omitted.)

Paige’s Brief at 22 – 24.

Under the “unclean hands doctrine,” a party is precluded from judicial relief if that party “engaged in fraudulent, illegal, or unconscionable conduct” in connection “with the matter in litigation.” *Suter v. Mazyck*, 226 S.W.3d 837, 843 (Ky.App. 2007). The unclean hands doctrine is an equitable doctrine and will not

be applied to produce an “inequitable result.” *Id.* at 843. And, a circuit court’s decision to invoke the unclean hands doctrine rests within its sound discretion.

Petroleum Exploration v. Pub. Serv. Comm’n of Kentucky, 304 U.S. 209, 58 S. Ct. 834, 82 L. Ed. 1294 (1938).

In this case, we cannot say that the circuit court abused its discretion by failing to invoke the unclean hands doctrine. Christopher testified that he relied upon an accountant to file his tax returns for the years 2000 through 2005 and that Christopher had not been charged with any criminal offenses relating to these tax returns. Christopher also stated that certificates of deposits were cashed in order to pay tax liabilities resulting from the amended tax returns. Considering the whole of the record, we perceive no abuse of discretion.

Paige next maintains that the circuit court’s award of attorney fees and costs was inadequate and constituted error. Paige points out that the circuit court awarded only \$21,000 in attorney fees and costs when she actually incurred some \$75,000 in attorney fees and costs. Paige argues that the circuit court should have awarded her the entire amount considering the great disparity in the parties’ income and financial resources.

Under KRS 403.220, the circuit court may award a party a reasonable amount of attorney fees and costs associated with a dissolution action. To justify such an award, there must exist a disparity in the parties’ financial resources.

Neidlinger v. Neiglinger, 52 S.W.3d 513 (Ky. 2001). However, the award of attorney fees and costs is not mandatory, and appellate review is limited to abuse

of discretion. *Id.*; *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004). An abuse of discretion occurs when the circuit court’s decision was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

In the case *sub judice*, there did exist a disparity in the financial resources of the parties. Christopher enjoyed an annual income between \$350,000 to \$400,000, while Paige was unemployed. The circuit court ordered Christopher to pay a portion of Paige’s attorney fees and costs. While the circuit court could have easily awarded more fees to Paige, considering the facts of this case, we are simply unable to conclude that the circuit court’s award of \$21,000 in attorney fees and costs was arbitrary, unreasonable, unfair, or unsupported by legal principles. Accordingly, we are of the opinion that the circuit court did not abuse its discretion by awarding \$21,000 in attorney fees and costs to Paige.

Finally, Paige contends that the circuit court erred by failing to award her maintenance. KRS 403.200(1) states that maintenance may only be granted if the court finds the spouse seeking maintenance lacks sufficient property, including marital property apportioned to her, and is unable to support herself through appropriate employment. As we have reversed part of the circuit court’s ruling on the disposition of marital property and remanded for further review and action, on remand we believe the circuit court must also reconsider the issue of maintenance. *See Brunson v. Brunson*, 569 S.W.2d 173 (Ky.App. 1978).

As to remaining contentions raised by Paige in this appeal, we deem them to be without merit.

For the foregoing reasons the orders of the Kenton Circuit Court are affirmed in part, reversed in part, and this cause is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

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