

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-001402-MR
AND
NO. 2007-CA-001457-MR

SHARON ANN KONRAD

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM JEFFERSON FAMILY COURT
v. HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 96-FC-007260

KARLHEINZ MICHAEL KONRAD

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** *

BEFORE: LAMBERT, STUMBO AND THOMPSON, JUDGES.

THOMPSON, JUDGE: This is a post-dissolution of marriage action in which Sharon Ann Konrad seeks an increase in the existing maintenance award, and Karlheinz Michael Konrad (Karl) seeks to decrease or eliminate the maintenance award. After the Jefferson Family Court denied both motions and awarded Sharon \$1,000 for attorney fees, Sharon appealed and Karl cross-appealed. Because we

agree with the family court that neither party established a substantial change of circumstances to warrant a modification of the existing award, we affirm.

Likewise, we find no error in the amount of attorney's fees awarded.

The parties married in 1969, and, at the time of their divorce in 1993, had two minor children. During the marriage, Sharon was not employed outside the home. Since 1976, Karl had been employed by Ford Motor Company and earned a gross monthly income of \$9,707.50 per month. The court found that both children had extraordinary needs that justified a deviation from the child support guidelines and Karl was ordered to pay \$1,565 per month in child support. The court found that Sharon was incapable of providing for her own reasonable needs and awarded her \$1,000 per month in maintenance until Sharon's death or remarriage.

During the interim between the divorce and her motion for an increase in maintenance, Sharon did not seek employment until her youngest child was emancipated and she no longer received child support. She has held only two employment positions, both of which were temporary and of short duration. The family court found that although Sharon suffers from health impediments, those same conditions existed at the time of the divorce. She has amassed credit card debt and depleted the equity in her residence, which the family court attributed to Sharon's inability to live within her means.

Karl retired from Ford on December 31, 2006. His retirement prior to age sixty-two was the result of an employee restructuring plan at Ford and

involved an early retirement incentive package offered to thousands of similarly situated employees. Following his retirement, Karl's gross monthly income is \$6,459.22. Sharon is to receive \$466.70 per month and, when Karl reaches sixty-two years of age, her benefits will increase to \$471.37.

Sharon argues that her maintenance award should be increased while Karl contends that it should be decreased or eliminated. Both contentions are analyzed pursuant to the same statute, KRS 403.250. That statute provides:

Except as otherwise provided in subsection (6) of KRS 403.180, the provisions of any decree respecting maintenance may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

Because it is the intent of the statute that maintenance awards remain stable, the movant must demonstrate compelling evidence to support the requested modification. *McKenzie v. McKenzie*, 502 S.W.2d 657 (Ky. 1973). "The determination of questions regarding maintenance is a matter which has traditionally been delegated to the sound and broad discretion of the trial court, and an appellate court will not disturb the trial court absent an abuse of discretion." *Barbarine v. Barbarine*, 925 S.W.2d 831, 832 (Ky.App. 1996).

Sharon's claim for an increased maintenance award is premised on the increase in Karl's income from the date of the divorce until his retirement. Prior to his effective retirement date, he earned \$11,900 per month from Ford. However,

Sharon cannot deny that since his retirement, Karl's monthly income from Ford has decreased to \$6,459.22 per month. Moreover, her portion of the marital pension benefit effective January 1, 2007, is \$466.70.

Sharon suggests that had Karl not chosen early retirement, he could afford an increase in maintenance. When considering the impact of retirement by the payor spouse, the court is to consider and weigh the circumstances of the case and determine if the advantage to the retiring spouse substantially outweighs the disadvantage to the payee spouse. *Id.* at 833.

Karl's retirement cannot be characterized as purely voluntary. It was the result of an extensive early retirement package offered by Ford to its qualified employees. As presumably did other employees, Karl accepted the incentive package because of anticipated layoffs at Ford. Moreover, Sharon will reap the benefit of receiving her marital share of the pension benefits.

We agree with the family court that there has not been a substantial change in circumstances warranting an increase in the maintenance award. Although prior to his retirement, Karl had an increase in his monthly income, increases in income were necessarily foreseeable and anticipated at the time of the decree. Unfortunately, Sharon's financial situation has deteriorated after the divorce, which we agree with the trial court, is attributable to her lack of employment and high expenditures. Sharon's physical ailments, while perhaps debilitating, existed at the time of the decree and thus are not a change of circumstances warranting an increase in the maintenance award.

For the same reasons we find no substantial change in circumstances warranting an increase in maintenance, we affirm the family court's denial of Karl's motion to decrease or eliminate the maintenance award. His decision to accept early retirement is not alone sufficient to render the original award unconscionable. *Bickel v. Bickel*, 95 S.W.3d 925 (Ky.App. 2002). Sharon is in no better position to provide for her reasonable needs at this time than she was at the time of the divorce and there is no evidence that Karl's retirement benefits are insufficient to meet his reasonable needs and his maintenance obligation.

Finally, we find no error in the family court's decision to order Karl to pay \$1,000 to Sharon's attorney. After considering the financial resources of both parties, the court may order a party to pay a reasonable amount for attorney's fees. KRS 403.220. When awarding attorney's fees, the court is only required to find a disparity in the financial resources of the parties. The amount of an award of attorney's fees is committed to the sound discretion of the trial court. *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990).

Sharon submitted documentation that her attorney's fees were \$4,736, which included amounts expended to respond to the motion to decrease or eliminate maintenance but also to pursue her motion to increase maintenance. Under the circumstances, we cannot agree that the trial court abused its discretion when it refused to award Sharon the entire amount of attorney's fees requested.

Based on the foregoing, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-
APPELLEE:

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BRIEF FOR APPELLEE/CROSS-
APPELLANT:

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