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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001758-MR

WALTER THOMAS WOOD

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DOUGLAS BRUCE PETRIE, JUDGE
ACTION NO. 05-CI-00335

CARI PAIGE WOOD

APPELLEE

OPINION
AFFIRMING IN PART, AND
VACATING AND REMANDING IN PART

** ** *

BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Walter Thomas Wood appeals from a judgment entered by the Boyle Circuit Court in a dissolution proceeding. We affirm in part, and vacate and remand in part.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Walter and Cari Paige Wood (Paige) married in 1995 and divorced in 2006. Their two children were born in 1996 and 2003. The parties reached an agreement regarding child custody and most property issues. After conducting a hearing on the remaining issues, the trial court found in pertinent part that a 1996 Honda Accord was Paige's nonmarital property, and that Walter should pay her rehabilitative maintenance in the amount of \$500 per month for 24 months. This appeal followed.

Walter first asserts that the trial court erred by awarding the Honda to Paige as nonmarital property. We disagree.

Paige produced evidence to show that although the Honda was purchased after the marriage, her nonmarital funds were used to pay its entire cost. Although Walter produced nothing to contradict Paige's evidence regarding the use of nonmarital funds, he asserted that because the vehicle was utilized as if it were a marital asset, it should be treated as such in the distribution of property. However, regardless of whether Walter used the vehicle as transportation to work so that he could earn marital income, and regardless of whether Paige had access to another vehicle due to the generosity of her parents, Walter's argument lacks merit. KRS 403.190(1) specifically provides that in a dissolution proceeding, the trial court "*shall* assign each spouse's property to him." (Emphasis added.) No support exists for Walter's claim that a marital component attached to the nonmarital

vehicle because of its marital use. Absent any evidence that marital funds were used to purchase the Honda, the trial court clearly did not err by awarding the vehicle or its current value to Paige as her nonmarital property.

Walter also contends that the trial court abused its discretion by awarding maintenance to Paige. Because the court failed to specifically make the findings required by KRS 403.200(1), the court's order must be vacated and remanded for further proceedings as to the award of maintenance.

KRS 403.200(1) provides in pertinent part that a trial court may award maintenance only after finding that the spouse who seeks 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[.]

If both requirements are satisfied, the amount and duration of maintenance shall be determined after the consideration of all relevant factors, including the “time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment[.]” KRS 403.200(2)(b).

Here, the record shows that Walter earned approximately \$44,000 per year while Paige, who had a B.S. in biology, worked only intermittently as a substitute teacher or babysitter during the marriage. The parties agreed that the sale of the marital residence provided each party with approximately \$19,000 in marital property proceeds, plus another \$16,000 in nonmarital property proceeds for Paige after the repayment of a debt to her parents. At the time of the

dissolution, Paige and the children were residing with Paige's parents in Tennessee and were contributing \$300 per month toward their own food and living expenses. Paige, who was not employed but was attending school full time, testified that her Stafford loans fell short of covering her school expenses by about \$6,000 per year.

The trial court found in pertinent part:

That since the parties' separation in April 2005, [Paige] has taken an active role in furthering her own education. As of May 15, 2006, [Paige] began a two-year program to become a licensed physician's assistant, the average starting salary for which is approximately \$65,000 per year. Although [Paige] currently lives with her parents, after considering the cost of tuition and books, [Paige] will experience a yearly shortfall of approximately \$6,000. Minimum wage of \$893 per month, \$10,714 per year, shall be imputed as the income of [Paige].

The court directed Walter to pay Paige rehabilitative maintenance in the amount of \$500 per month for 24 months, commencing in June 2006. The court further directed Walter to pay child support in the amount of \$710 per month.

Unfortunately, the trial court failed to make the specific statutory findings which are required by KRS 403.200(1) as a prerequisite to any award, or our review of any award, of maintenance. *See, e.g., Dotson v. Dotson*, 864 S.W.2d 900 (Ky. 1993); *Hollon v. Hollon*, 623 S.W.2d 898 (Ky. 1981); *Cochran v. Cochran*, 746 S.W.2d 568 (Ky.App. 1988). Clearly, Paige's ability to generate income was temporarily limited by her pursuit of higher education. However, the court made no findings regarding Paige's reasonable monthly expenses or the role her property might play in permitting her to support herself. We therefore are

compelled to vacate the court's award of maintenance, and to remand this matter to the trial court for findings regarding Paige's entitlement to maintenance pursuant to KRS 403.200(1). If the trial court determines that maintenance was properly awarded, the amount and duration of such maintenance shall be reconsidered in light of the provisions set out in KRS 403.200(2). *See Cochran*, 746 S.W.2d at 570.

The judgment of the Boyle Circuit Court is affirmed as to the award to Paige of the vehicle, or its value, as nonmarital property. The judgment is vacated and remanded for further proceedings regarding the award of maintenance, consistent with the views expressed in this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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