

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-000998-MR

KATHY FRYMAN PLACIER; AND  
RICHARD M. RAWDON, JR.

APPELLANTS

v.

APPEAL FROM SCOTT CIRCUIT COURT  
HONORABLE TAMRA GORMLEY, JUDGE  
ACTION NO. 05-CI-00546

THOMAS F. PLACIER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, CLAYTON, AND DIXON, JUDGES.

CAPERTON, JUDGE: Kathy Fryman Placier and her attorney, Richard M.

Rawdon, Jr., have appealed from orders of the Scott Circuit Court awarding

maintenance and attorney fees, asserting that the trial court should have awarded a

higher amount for each category. Having determined that the trial court did not

abuse its discretion, we affirm.

Kathy and Thomas F. Placier were married in Chillicothe, Ohio, on July 2, 1983. One child, a daughter, was born of the marriage on September 10, 1989. Thomas works for Toyota as a group leader and Kathy works full-time as a library assistant at an elementary school while she completes her teaching degree at Midway College. Kathy and Thomas separated in October of 2004, and Thomas filed a petition to dissolve the marriage on September 9, 2005.

Approximately two years later, the parties entered into a property settlement agreement, which resolved a number of issues. Kathy retained the marital residence in Georgetown, Kentucky, and was to pay \$19,000 to Thomas, representing half of the equity in the property. That amount was to be deducted from Thomas' 401K plan. Thomas agreed to pay a \$3000 debt to Toyota Credit Union, and the parties split a \$20,900 debt to AT&T.<sup>1</sup> The entire amount of the AT&T debt was to be deducted from Thomas' Toyota pension. Kathy received the 2002 Toyota and Thomas received the 2001 Ford Mustang and 1969 Toyota Land Cruiser.

The parties agreed to equally split the remainder of Thomas' pension and 401K account, which together equaled in excess of \$330,000 prior to deductions. The issues of maintenance and attorney fees were reserved for the court to decide at a later date. The property settlement agreement was approved, and the decree of dissolution was entered on February 13, 2008.

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<sup>1</sup> Thomas' share was 70 percent (\$14,630) and \$2,962 in taxes; Kathy's share was 30 percent (\$6,270) and \$1,254 in taxes.

The contested issues were argued at a final hearing on January 18, 2008. At the hearing, Kathy testified that she was enrolled full-time at Midway College seeking a teaching degree, with a targeted graduation date in four years. She was also working full-time as a library assistant at Western Elementary School earning \$10.55 per hour, or \$803 per month. Her expenses equaled \$3200 per month. Kathy requested \$2600 per month in maintenance for five years, citing the reduction in her income, the cost of her education, and her award of non-income producing property. Kathy also requested \$7000 in attorney fees, based upon Thomas's prolonging of the litigation.

Thomas testified as to his claimed monthly expenses,<sup>2</sup> explaining that several of his expenses took into account the expenses of his daughter, who continued to live with him. He also testified that he purchased a house and had a mortgage payment in excess of \$1000. Furthermore, he testified that he continued to pay all of Kathy's expenses, including the \$783 monthly mortgage on the marital residence and credit card debt, throughout the dissolution proceedings. While Thomas did not contest an award of maintenance for a reasonable amount and duration, he did contest Kathy's request that he pay her attorney fees, citing the amount of property and maintenance she would receive.

The trial court entered an order on February 29, 2009, detailing its findings of fact and conclusions of law. Kathy was awarded maintenance in the amount of \$800 per month for 42 months (March 1, 2008, through August 2011).

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<sup>2</sup> The trial court found the parties' monthly expenses to be \$4079, inclusive of Kathy's expenses totaling \$2077.

Thomas was ordered to pay \$2500 towards Kathy's attorney fees directly to her attorney.

Kathy then moved to amend the findings of fact and conclusions of law; she disputed the expense listings and asserted that the trial court did not take into account her need to pay back her school loans. Regarding the award of attorney fees, Kathy contended that the trial court did not take the *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004), factors into account and that she did not have the funds to pay the fees herself.

The trial court denied Kathy's motion and entered an order on April 3, 2008, making the prior orders final and appealable. This appeal followed.

On appeal, Kathy contends that the trial court made several erroneous findings concerning Thomas's expenses and that it abused its discretion in the amount and duration of maintenance and the amount of attorney fees awarded.

Thomas contends that the circuit court's awards of maintenance and attorney fees were proper.

Our standard of review is described in *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. App. 2003), as follows:

Under CR 52.01, in an action tried without a jury, "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court." *See also Greater Cincinnati Marine Service, Inc. v. City of Ludlow*, Ky., 602 S.W.2d 427 (1980). A factual finding is not clearly erroneous if

it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, Ky., 976 S.W.2d 409, 414 (1998); *Uninsured Employers' Fund v. Garland*, Ky., 805 S.W.2d 116, 117 (1991). Substantial evidence is 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. *Golightly*, 976 S.W.2d at 414; *Sherfey v. Sherfey*, Ky.App., 74 S.W.3d 777, 782 (2002). An appellate court, however, reviews legal issues *de novo*. See, e.g., *Carroll v. Meredith*, Ky.App., 59 S.W.3d 484, 489 (2001). [Footnote omitted.]

We shall now consider the two issues raised in the present appeal.

Kathy's first argument addresses the issue of maintenance. She argues that the trial court's award, both in amount and duration, was erroneous, as it was based upon erroneous findings and constituted an abuse of discretion. Specifically, Kathy asserts that the trial court impermissibly reduced the amount of her claimed expenses, even lower than that which Thomas acknowledged, while at the same time finding an increased amount of expenses for Thomas. Furthermore, Kathy states that the circuit court did not take into account the tax consequences of the receipt and payment of maintenance to her and Thomas. She also continues to dispute Thomas's claimed expenses.

The General Assembly provided for the award of maintenance in Kentucky Revised Statutes (KRS) 403.200. KRS 403.200(1) provides that a court may grant maintenance only if it finds the spouse seeking it: (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.

The decision whether to award maintenance and the amount is reviewed for abuse of discretion. *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003); *Sayre v. Sayre*, 675 S.W.2d 647, 647 (Ky. App. 1984); *Brenzel v. Brenzel*, 244 S.W.3d 121, 126 (Ky. App. 2008). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Sexton*, 125 S.W.3d at 272 (internal citations omitted).

Moreover, an award of maintenance is appropriate when a party is not able to support himself in accord with the standard of living enjoyed during the marriage, and the property awarded upon dissolution of marriage is insufficient to provide for his reasonable needs. *Russell v. Russell*, 878 S.W.2d 24, 26 (Ky. App. 1994). In the present case, there is no dispute that Kathy is entitled to an award of maintenance; rather, the parties dispute the reasonableness of the amount and duration of the award.

Once the trial court has decided that maintenance is appropriate, it must then consider all relevant factors in determining the amount and duration of maintenance pursuant to KRS 403.200(2). Such factors include the spouse’s financial resources, the time needed to obtain sufficient education or training, the standard of living during the marriage, the duration of the marriage, the age and condition of the spouse seeking maintenance, as well as the ability of the paying spouse to meet his needs.

Based upon our review of the record, we cannot hold that the trial court abused its discretion in either the amount or duration of the maintenance awarded. Despite being enrolled full-time at Midway College, Kathy continues to work full-time, and upon the completion of her education, her income is expected to increase. The trial court's maintenance award took Kathy's education into account by providing her with \$800 per month (sufficient to pay the mortgage on the marital residence, which she was awarded) until she graduated and could obtain employment commensurate with her education.

Furthermore, Kathy received half of Thomas's considerable retirement accounts, and her portion of the marital debt as well as the equity equalization from the marital residence were both paid from Thomas's retirement accounts, meaning that Kathy left the marriage debt-free and without paying Thomas any cash out-of-pocket. She also was awarded a car that Thomas had paid off. Kathy also benefitted from Thomas's paying of her expenses during the dissolution proceedings. Finally, the court considered Thomas's ability to pay maintenance in light of his salary and expenses. The trial court clearly considered all of these factors and, based upon the foregoing, did not abuse its discretion in the amount or duration of maintenance that Kathy was awarded.

Kathy's second argument to this Court is that the trial court abused its discretion when it opted to award only a portion of the attorney fees she requested. She maintains that Thomas should have been required to pay for all of her incurred attorney fees due to the disparity in their incomes, their respective financial

resources, and the results secured. She relies upon *Sexton, supra*, to support this argument, specifically upon the Kentucky Supreme Court's mention of obstructive tactics and conduct as justifying an award. She also states that the trial court failed to make findings reflecting its consideration of the *Sexton* factors.

In response, Thomas disputes Kathy's assertion that he prolonged the litigation, but rather states that Kathy's attorney failed to respond to several proposals, and he points out that he continued to pay for the majority of Kathy's expenses during the pendency of the matter.

The standard of review for an award of attorney fees is set out in *Allison v. Allison*, 246 S.W.3d 898, 909 (Ky. App. 2008), as follows:

Attorney fees may be awarded to a party pursuant to KRS 403.220. Expert witness fees may also be awarded pursuant to that statute. *See Culver v. Culver*, 572 S.W.2d 617, 622 (Ky. App. 1978). The statute states that the court should consider "the financial resources of both parties [.]" KRS 403.220. Further, the statute states that the court may award a "reasonable amount" for the fees. *Id.* An award of fees is reviewed by this court under an abuse of discretion standard. *Neidlinger*, 52 S.W.3d at 520.

In light of the amount of marital property Kathy was awarded, her award of maintenance, the fact that Thomas continued to pay her expenses during the pendency of the action, her current income and future income potential, and the deferral of her loans until she finishes her education, we cannot say that the trial court abused its discretion in awarding Kathy and her attorney an amount less than the fees requested.



For the foregoing reasons, the orders of the Scott Circuit Court are hereby affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Richard M. Rawdon, Jr.  
Georgetown, Kentucky

BRIEF FOR APPELLEE:

Lola Philpot Lewis  
Lexington, Kentucky