

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001810-MR

THOMAS M. VINEY

APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
FAMILY COURT, DIVISION II
v. HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 08-CI-01162

JENNIFER R. VINEY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CAPERTON, COMBS, and THOMPSON, JUDGES.

COMBS, JUDGE: Thomas M. Viney appeals from the Oldham Family Court's findings of fact, conclusions of law, and decree of dissolution of marriage entered July 22, 2010. After our review, we affirm.

Thomas and Jennifer R. Viney were married in October 2002. They separated in November 2008. At the time of trial in February 2010, Thomas was

thirty-three years of age and Jennifer was thirty-seven. Thomas is employed as an executive with ResCare, Inc., in Louisville. Prior to the birth of their first child in August 2003, Jennifer had been employed by Lexmark International, Inc., in Lexington. Jennifer began to suffer with severe postpartum depression and anxiety, and she took a leave of absence from her position with Lexmark. She also suffers from a disabling addiction to alcohol. At the time of trial, Jennifer was unemployed and living in a residential group home in Lexington.

From May 2005 until December 2008, Jennifer was admitted to multiple rehabilitation facilities aimed at treating her depression and alcohol addiction within a thirty-day program setting. In December 2008, she was admitted to a residential treatment facility (the Hope Center in Lexington) with a long-term recovery program. In October 2009, she was admitted to Chrysalis House in Lexington where she continued to reside at the time of trial.

Following the hearing, the family court awarded Thomas sole custody of the parties' minor child and ordered Jennifer to contribute to the child's support. The non-marital property was valued and assigned; the marital property was divided. The family court ordered Thomas to pay maintenance to Jennifer, and a final decree of dissolution of marriage was entered. This appeal followed.

On appeal, Thomas contends that the family court erred by awarding maintenance to Jennifer because she failed to show that she required maintenance to meet her reasonable needs and because Thomas demonstrated that it would be impractical for him to pay such a sum in view of his earnings and expenses.

Thomas argues that the family court neglected to make specific findings of fact in support of the maintenance award -- despite his express request for those findings.

Our review of the family court's findings of fact "is governed by the rule that such findings shall not be set aside unless clearly erroneous." *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App.2005). A factual finding is not clearly erroneous if it is supported by substantial evidence. *Id.* Substantial evidence is evidence that, when taken alone or in light of all the evidence, would be regarded as adequate to support a particular conclusion. *Moore v. Asente*, 110 S.W.3d 336 (Ky.2003). However, a family court's conclusions of law are subject to plenary review. *Gosney, supra*.

Kentucky Revised Statute[s] (KRS) 403.200(1) provides that a court may grant maintenance only where it finds that the spouse seeking maintenance has shown that he:

- (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 provisions of KRS 403.200(2) direct that where an award of maintenance is deemed necessary, the "order shall be in such amounts and for such periods of time as the court deems just," having considered "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. . . ;

- (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.

In this case, the family court made extensive findings with respect to the parties' employment history, income, and property. It ordered the marital residence to be sold.¹ From the proceeds, 67% was assigned to Jennifer as her nonmarital property; the remaining 34% was divided between the parties. Because Jennifer had been largely absent from the home and family, she was awarded only 9% of the accumulated marital equity in the home; Thomas was awarded the remaining 25%. In addition, most of the modest amount of household goods and furnishings were assigned to Jennifer as her nonmarital property. The value of a 2004 Toyota Tacoma truck (\$7,762.00) was assigned to Jennifer as her nonmarital property, and she was awarded a 2004 Toyota Sienna minivan, a portion of which also constituted her non-marital property. Jennifer was awarded an IRA account with a value of \$15,448.00; one-half of Thomas's account with Morgan Stanley Smith Barney having a total value of \$7,962.00; and one-half of Thomas's Charles

¹ In an order entered on January 20, 2011, the family court indicated that the asking price for the marital home would be \$306,000.00. The mortgage balance one year earlier was \$225,000.00.

Schwab account having a total value of \$17,337.00. Thomas's retirement and savings plan was equally divided pursuant to a Qualified Domestic Relations Order. Finally, Thomas was ordered to contribute \$4,000.00 toward Jennifer's attorney fees.

After having restored to Jennifer her nonmarital property and distributed to her a portion of the couple's marital property, the family court found that Jennifer nevertheless lacked sufficient property to provide for her reasonable needs and that she was unable (at least in the short term) to support herself through employment. The court considered the factors enumerated in KRS 403.200(2) pertaining to the amount and duration of maintenance and referred specifically to Thomas's ability to meet his own needs while contributing to Jennifer's. The court found that Thomas's annual salary is \$105,000. While Jennifer testified that her anticipated monthly expenses would exceed \$4,700 after she completed her rehabilitation program, the family court ordered Thomas to pay maintenance in the amount of \$2,250 per month for a period of two years. From this sum, Jennifer was ordered to pay monthly child support in the amount of \$215 and a portion of the child's extraordinary medical expenses.

Thomas contends that the family court erred "by completely failing to document its findings" in support of its conclusion that Jennifer was entitled to a maintenance award of \$2,250 per month for a period of two years. He contends that the evidence does not support that conclusion, in part, because he showed that

he cannot afford to pay a significant amount of maintenance to Jennifer each month.

In support of his argument, Thomas explains that the full spectrum of services provided by Chrysalis House initially includes housing (and eventually housing assistance) when its clients transition to independent living. While she was receiving in-patient substance and mental health treatment, Thomas argues that Jennifer had no demonstrable expenses whatsoever; he also contends that if and when she completes her substance abuse program, residing with family members might well be desirable. Thomas asserts that the family court's monthly maintenance award was nothing more than a random figure lacking any basis so as to comport with adequacy of findings.

On the contrary, the record clearly supports the family court's finding that Jennifer was unable to support herself (at least in the short term) by means of appropriate employment. It is equally clear that Jennifer lacked sufficient property to provide for her reasonable needs. Under the circumstances presented here, Jennifer was not required to liquidate and consume her property, to rely on the kindness of strangers, or to turn to her family for financial support in lieu of an award of maintenance.

Moreover, there is nothing before us to suggest that the family court's maintenance order was anything but a fair compromise (both in terms of the amount payable and in duration) properly considering: (1) Jennifer's projected needs based upon her emotional condition and the time necessary for her recovery,

(2) her ability to meet those needs independently, (3) the standard of living established during the marriage, and (4) the ability of Thomas to contribute (in the short term) to her support. Instead, the family court's decision with respect to the maintenance award appears to have fallen soundly within its broad discretion.

Nothing about the order suggests that the family court imposed an undue burden upon Thomas, and the provisions of KRS 403.200 do not require the family court to support its findings with mathematical precision. The family court did not abuse its discretion by awarding maintenance in the amount and for the time period contained in its order.

We affirm the judgment of the Oldham Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Louis P. Winner
Stacy Anne Hoehle
Louisville, Kentucky

BRIEF FOR APPELLEE:

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