

RENDERED: OCTOBER 26, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2011-CA-001527-MR

KATHERINE SCARLET BROWN

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT  
HONORABLE O. REED RHORER, JUDGE  
ACTION NO. 07-CI-00125

JAMES MICHAEL BROWN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Katherine Brown, *pro se*, appeals from an order denying her motion to increase maintenance. We find no error and affirm.

This case has already been appealed to this Court. We shall use that recitation of facts.

James and Scarlet<sup>1</sup> were married in Fayette County, Kentucky, on June 6, 1995. They had two sons during the marriage-Dylan, (d.o.b.10/17/01) and Wesley (d.o.b.1/23/03). James and Scarlet separated in February of 2007, and James filed a petition to dissolve the marriage on February 21, 2007. At the time of the petition for dissolution, James worked for Phoenix Transportation, and Scarlet was a homemaker.

The parties were divorced by an amended decree of dissolution entered on March 3, 2008. In the decree, the family court held that proper evidence had not been provided regarding the issue of maintenance and found that neither party was entitled to it. But after Scarlet filed a motion to reconsider the issue of maintenance, the family court then held that neither party had been given an adequate opportunity to present evidence on the issue and scheduled a hearing. A hearing on the issue of maintenance was held on May 1, 2008. On May 15, 2008, the family court ordered maintenance to Scarlet in the amount of \$900.00 per month for two years and \$700.00 per month for the next three years. Thereafter, James filed a motion to reconsider this order, which the judge, after holding a hearing on June 23, 2008, overruled. On August 18, 2008, James appealed from this order.

*Brown v. Brown* , 2010 WL 3603913, 1 (Ky. App. 2010).

Before the first appeal became final, Mr. Brown moved to have his maintenance amount reduced or discontinued. The trial court reduced his maintenance from \$900 a month to \$50 a week. The trial court found that pursuant to *Ogle v. Ogle*, 681 S.W.2d 921 (Ky. App. 1984), and Kentucky Revised Statute (KRS) 403.250, it could modify a maintenance award even though Mr. Brown's appeal on the original maintenance award was pending. On February 17, 2009, the

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<sup>1</sup> Ms. Brown's middle name is Scarlet and she was referred to as such by the trial court and former panel of this Court.

trial court reduced Mr. Brown's maintenance obligation because it found that he had lost his job and his only income was from unemployment benefits. The first appeal in this case became final on September 17, 2010. The previous panel of this court found that awarding Ms. Brown maintenance was proper.

After the February 17, 2009 order reducing Mr. Brown's maintenance obligation, both parties continued to file multiple motions regarding the issue. Mr. Brown moved to terminate his maintenance obligation and Ms. Brown moved to have the maintenance amount reinstated to \$900 a month. Pertinent facts revealed by these motions are that Mr. Brown found employment, albeit at a significantly lower salary than he was earning in 2008, and that Ms. Brown had become employed.<sup>2</sup> The final motion to reconsider maintenance filed by Ms. Brown was denied on July 18, 2011. This appeal followed.

KRS 403.250(1) states in part that "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." "In determining awards of maintenance, we may not set aside the findings of the family court unless they are clearly erroneous. Further, the trial court is afforded a wide range of discretion, which is reviewed under an abuse-of-discretion standard." *Age v. Age*, 340 S.W.3d 88, 94 -95 (Ky. App. 2011) (citations omitted).

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<sup>2</sup> We were unable to locate an exact amount earned by Ms. Brown in the record. The parties' briefs were of little help because neither made any citations to the record and were devoid of relevant facts.

In this case, a previous panel of this court found that Ms. Brown was properly awarded maintenance and affirmed the \$900 a month award. The trial court has continuously held that Ms. Brown is entitled to maintenance, although currently at the lower amount of \$50 a week. We find that the trial court did not abuse its discretion and that the maintenance amount of \$50 a week is not unreasonable or unfair.

Mr. Brown's maintenance obligation was reduced to \$50 a week when he lost his job and began receiving unemployment benefits. Since then, he has obtained new employment, but at a lower salary. Additionally, Ms. Brown has also obtained employment. Maintenance may be modified after a showing of changed circumstance so substantial that the current terms would be unconscionable. Both parties have had a change in circumstances, but they are not such changes that would make the current maintenance award unconscionable. The trial court did not abuse its discretion in denying Ms. Brown's request to modify her maintenance award.

For the foregoing reasons we affirm the order of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Katherine Brown, *pro se*  
Georgetown, Kentucky

BRIEF FOR APPELLEE:

Douglas Howard  
Frankfort, Kentucky