

RENDERED: SEPTEMBER 13, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000203-MR

TRACIE LYNN GARRETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PATRICIA WALKER FITZGERALD, JUDGE
ACTION NO. 10-CI-503830

GEOFFREY SCOTT GARRETT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, LAMBERT AND NICKELL, JUDGES.

NICKELL, JUDGE: Tracie Lynn Garrett has appealed from the findings of fact and conclusions of law entered on January 4, 2012, by the Jefferson Circuit Court, Family Division, denying her motion for a reasonable fee for her attorney in her dissolution of marriage action. We affirm.

Tracie was married to Geoffrey Scott Garrett for approximately ten years. No children were born to the marriage. Unfortunate difficulties resulted in the institution of the instant dissolution action. Following a trial on the matter, the family court entered its judgment dividing the marital estate. Based on the disparity of incomes between the parties, the court awarded Tracie maintenance in the amount of \$500.00 per month for a period of thirty-four months. It refused, however, to grant Tracie the \$5,400.00 in attorney's fees she was seeking. The denial of these fees is the sole issue raised on appeal.

Trial courts are authorized by KRS¹ 403.220 to award attorney's fees in dissolution actions "after considering the financial resources of both parties." A court may order payment of a "reasonable amount" of attorney's fees, "but only if there exists a disparity in the relative financial resources of the parties in favor of the payor." *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 519 (Ky. 2001) (citations omitted). However, even if a disparity is found to exist, the decision of "whether to make such an assignment and, if so, the amount to be assigned is within the discretion of the trial judge. There is nothing mandatory about it." *Id.* (citations and internal quotation marks omitted). Thus, we review the trial court's decision for an abuse of discretion. "The test for an abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

¹ Kentucky Revised Statutes.

In the case *sub judice*, the trial court considered the financial resources of the parties as required by KRS 403.220. In denying Tracie's request, the trial court found that despite a disparity in income, Tracie

received the majority of the parties' personal property while [Geoffrey] has shouldered the marital debt, specifically, maintaining the mortgage and utilities on the marital residence, paying for the repairs to the residence, paying the debt on the TESPHE² account, and making payments to his parents for the marital loan from them.

After considering the statutory factors, the trial court clearly determined Tracie was not entitled to additional contribution from Geoffrey for payment of her legal fees. Under the circumstances, we cannot conclude the trial court's decision constituted an abuse of its substantial discretion.

For the foregoing reasons, the judgment of the Jefferson Circuit Court, Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rose Benkert
Louisville, Kentucky

BRIEF FOR APPELLEE:

Nicole Tyler Cook
Louisville, Kentucky

² Tax-Efficient Savings Plan for Hourly Employees. Although unclear from the record, it appears this account is a retirement or savings plan owned by Geoffrey resulting from his employment with Ford Motor Company.