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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-001798-MR

ANGELIA DAMRON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JOAN L. BYER, JUDGE  
ACTION NO. 01-FC-005301

EARL W. DAMRON

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, MOORE AND VANMETER, JUDGES.

MOORE, JUDGE: Ms. Damron appeals an order of the Jefferson Circuit Court denying her motion to increase spousal maintenance and granting Mr. Damron's motion for a reduction and eventual termination of spousal maintenance. After careful review of the record, we affirm.

## I. FACTUAL BACKGROUND

Earl Damron and Angelia Damron were married on September 21, 1981, and were divorced on March 28, 2002. The parties' Agreed Order contained the following provision regarding Mr. Damron's maintenance obligation:

As maintenance for [Ms. Damron], commencing February 1, 2002, and continuing a minimum period of three (3) years, [Mr. Damron] shall pay to [Ms. Damron] as maintenance the sum of \$2,850 per month. Said payment shall be includible in the income of [Ms. Damron] and deductible to [Mr. Damron]. Said maintenance payments shall not be reviewable by either party until the end of three (3) years, except if [Ms. Damron] receives any type of disability/social security payments, the maintenance will automatically be reduced by the amount that [Ms. Damron] received in disability/social security payments, commencing with the month of first payment. In addition, maintenance shall automatically be reviewable if either party changes employment, or if either party receives any type of disability or social security payments. The review of the maintenance will be in accordance with the law of Kentucky.

At the time the Agreed Order was entered, Mr. Damron assumed a majority of the parties' marital debt, including two home mortgages, over \$50,000 in credit card debt, the remaining debt on Ms. Damron's vehicle, *guardian ad litem* fees, and tax debts of approximately \$12,000. Mr. Damron also retained the marital residence and was awarded sole custody of the parties' two minor children, who are now adults. Ms. Damron assumed the debt on her own Kohl's account and a debt to Providian National Bank for \$4,825. Ms. Damron received a lump

sum of \$13,000 representing her share of equity in the marital residence retained by Mr. Damron. The Agreed Order also stated that Ms. Damron would not have to pay child support until she was fully employed. Ms. Damron never paid child support because she never obtained employment. In 2003, Ms. Damron began to receive Social Security Disability benefits in the amount of \$451 per month. In accordance with the Agreed Order, her maintenance payments were reduced by the amount of the disability benefit.

At the time of the divorce, Ms. Damron was a homemaker. She has a high school diploma and has completed approximately two years of college. She reenrolled in college in 2010 but was unable to complete her courses. Her only source of income, other than the maintenance payments, is the disability payments.

Mr. Damron currently continues to make payments on the existing marital debts. There is a contract for the sale of the marital residence, which should allow him to pay off the remaining mortgage balances. Since the divorce, Mr. Damron's income has increased. However, he has incurred student loan debt on behalf of the parties' children of approximately \$100,000. Mr. Damron now resides in California with his wife and their two minor children.

Since the divorce, Ms. Damron has not pursued any type of employment and remains unemployed. She currently resides in Kentucky with her grandmother and cousin where she does not pay rent nor does she regularly contribute to the household bills. In her current circumstances, Ms. Damron has a monthly car payment of \$359 and a monthly car insurance payment of \$159. Her

other expenses include approximately \$100 per month for prescriptions and between \$50 and \$100 for uninsured medical costs. She sees a psychiatrist as well as a doctor for thyroid issues. Ms. Damron pays approximately \$250 per month on a debt over \$10,000 to the Internal Revenue Service for failing to pay taxes over the past ten years on her maintenance income. Ms. Damron failed to provide the Court with documentation regarding the nature and extent of her disability. She did acknowledge in her testimony that since receiving the disability benefit payments in 2003, she has achieved a higher level of functioning.

Ms. Damron requested that the maintenance obligation be increased to \$4,250 per month due to Mr. Damron's increased income. Mr. Damron filed a motion to modify his maintenance obligation on March 21, 2012. He requested that his maintenance obligation be terminated or otherwise reduced for the financial strain it has placed on him over the past ten years.

Ms. Damron's motion was denied. The Court granted Mr. Damron's motion and reduced his maintenance obligation to \$1,250 effective March 21, 2012, the day he filed his request, for the duration of one year. The Court also ordered Mr. Damron's maintenance obligation be fully terminated after his final maintenance payment was made on March 24, 2013.

At the time the trial court's order was entered on September 21, 2012, Mr. Damron had continued paying the original maintenance obligation of \$2,361. Accordingly, the court deducted the overpayment amount from the total remaining

obligation in calculating his modified monthly maintenance amount. Ms. Damron now appeals.

## II. STANDARD OF REVIEW

The Court of Appeals reviews the family court's determination regarding a motion to modify maintenance for an abuse of discretion. *Block v. Block*, 252 S.W.3d 156 (Ky. App. 2007). A family court's factual findings may not be set aside unless clearly erroneous. *Id.* An appellate court should not disturb a family court's determinations if they are supported by substantial evidence. *Barbardine v. Barbardine*, 925 S.W.2d 831 (Ky. App. 1996).

## III. ANALYSIS

Ms. Damron raises the following several issues that will be addressed in turn. She argues that: (1) the family court abused its discretion by concluding her financial circumstances had improved since the divorce; (2) Ms. Damron argues that she is entitled to permanent maintenance for life or until remarriage; (3) she argues that because she has failed to achieve self-sufficiency, Mr. Damron's increases in assets and income over the past ten years and those of his current wife are relevant in determining this post-decree maintenance modification amount; (4) Ms. Damron argues that the family court abused its discretion by failing to take judicial notice of the determination by the Social Security Administration of her disability; and (5) she argues that the trial court abused its discretion by making the maintenance modification order retroactive.

The first issue that Ms. Damron raises is whether the family court abused its discretion by concluding that Ms. Damron's financial circumstances had improved since the divorce. The Court is authorized under Kentucky Revised Statutes (KRS) 403.200 to grant maintenance "only if it finds the spouse seeking 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." In determining the amount of the maintenance and the period of time it is to be paid, the Court must consider all relevant factors of KRS 403.200(2), including: the financial resources of the party seeking maintenance; the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; the standard of living established during the marriage; the duration of the marriage; the age, and physical and emotional condition of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

Ms. Damron testified that she has not sought employment and has remained unemployed since the divorce in 2002. She has some education in her background, including a high school diploma and approximately two years of college, and recently attempted to attend college again in 2010. She lives in a household where she does not have to pay rent or contribute to household bills on a regular basis. For over a decade, the maintenance payments from Mr. Damron have enabled her to avoid pursuing employment and to remain unemployed. The

language of the Agreed Order the parties entered into on March 28, 2002, granting their divorce contemplates Ms. Damron obtaining employment. The Court did not abuse its discretion by implicitly concluding that her financial circumstances had improved since the divorce. The Court, based on Ms. Damron's testimony, assessed her reasonable needs to be provided for by the maintenance under KRS 403.200(2) as having decreased since the time of the divorce. She testified as to her current expenses, which only included a monthly car payment, a monthly car insurance payment, and medical expenses. The Court, in addition to the factors listed in KRS 403.200(2), considered and generously included reasonable monthly needs for groceries, gas, rent, utilities and general living expenses in its assessment of Ms. Damron's reasonable needs. The original maintenance arrangement revealed a need for modification to the family court upon comparison of Mr. and Ms. Damron's current circumstances to those circumstances upon their divorce in 2002. The record showed that Mr. Damron, while supporting the parties' two children and continuing to pay off substantial marital debt, has been paying maintenance to Ms. Damron above and beyond her reasonable needs over the past decade. Based on these circumstances and analysis of KRS 403.200, the family court concluded that it was time Mr. Damron's maintenance payments should be reduced and ultimately terminated. We cannot say this was an abuse of discretion based on the facts of this case.

Irrespective of the family court's determination for the reduction and termination of Ms. Damron's maintenance allowance, Ms. Damron argues that

there is a “presumption of maintenance for life or until remarriage.” *Combs v. Combs*, 622 S.W.2d 679, 680 (Ky. App. 1981). It is accurate that there are instances of maintenance awards lasting for indefinite periods of time. However, this proposition may be refuted. It is important to keep in mind the policies behind KRS 403.200 and 403.250 of rehabilitation and relative stability. “KRS 403.200 seeks to enable the unemployable spouse to acquire the skills necessary to support himself or herself in the current workforce so that he or she does not rely upon the maintenance of the working spouse indefinitely.” *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003). While the policy of KRS 403.250 calls for relative stability, “stability does not mean or require permanence.” *Daunhauer v. Daunhauer*, 295 S.W.3d 154, 157 (Ky. App. 2009). The objectives of these statutory policies may not always be met “in situations where the marriage was long term, the dependent spouse is near retirement age, the discrepancy in incomes is great, or the prospects for self-sufficiency appears dismal.” *Powell* at 224.

Mr. and Ms. Damron were married for twenty years, a considerable length of time. Ms. Damron was a homemaker with no income during their marriage. However, they were nowhere near retirement age at the time of their divorce, and there is nothing in the record absolutely demonstrating the inability of Ms. Damron to become self-sufficient. The record does indicate, however, (based on the language in the Agreed Order) the expectation of Ms. Damron obtaining employment subsequent to the divorce; her testimony stating her higher level of functioning since 2003; and her recent attempt in 2010 to reenroll in college.



Accordingly, we do not find error by the trial court when the record contains some evidence that Ms. Damron has the potential to become self-sufficient.

Despite the family court's implied determination of Ms. Damron's capability of becoming self-sufficient, Ms. Damron argues under *Daunhauer v. Daunhauer* 295 S.W.3d 154 (Ky.App. 2009), that she has failed to achieve self-sufficiency after the divorce. Therefore, she maintains that Mr. Damron's current assets and income and those of his wife should be included in determining the proper amount of maintenance. Ms. Damron further argues that the family court committed reversible error by concluding Mr. Damron's current assets and income to be irrelevant in a post-decree maintenance modification determination.

The prerequisite in a maintenance modification determination for the consideration of post-decree increases in assets and income of the obligor is financial dependency by the recipient. *Id.* However, the Court in *Daunhauer* in addressing post-decree increases in the obligor's assets and income also clearly states that simply because the obligor has sufficient assets or income for increased maintenance payments does not mean the obligor should be required to pay more. The *Daunhauer* case refers to *Roberts v. Roberts*, 744 S.W.2d 433, 436 (Ky. App. 1988), to make it clear that it does not intend to "foster an atmosphere in which a long-parted spouse may ... share the wealth with a former spouse who has ... bettered his position in life through his own hard work and efforts."

The maintenance payments from Mr. Damron over the last decade have provided Ms. Damron's only income, besides her monthly disability benefit,

and have enabled her to avoid self-sufficiency since the divorce, for better or worse. Mr. Damron testified that his income has increased over the past ten years. However, there is nothing in the record showing that Ms. Damron is disabled in such a way that she is not capable of employment in some capacity to aid herself in gaining self-sufficiency. Ms. Damron provided no documentation as to the nature or extent of her disability, other than that she receives a monthly disability benefit payment. The language of the Agreed Order specifically refers to her gaining employment subsequent to the 2002 divorce. The family court properly concluded Mr. Damron's current assets and income to be irrelevant in this post-decree maintenance modification determination, and in addition, that it was appropriate for Mr. Damron's maintenance obligation to end.

Despite failing to cite any applicable authority, Ms. Damron argues that the family court abused its discretion by failing to take judicial notice of the Social Security Administration's (SSA) determination of her disability.

Essentially, Ms. Damron is asserting that because she has been determined to be disabled by the SSA, she is entitled to monthly maintenance payments. She refers to Kentucky Rules of Evidence (KRE) 201 as her only support of this argument.

This rule has no applicability to this case, and therefore, this Court has no obligation to consider this premise. Ms. Damron cites no other legal authority in support of her argument that due to her disability as designated by the SSA, she is entitled to an increased and indefinite award in maintenance. Ms. Damron's disability appropriately served its purpose as a factor that the family court

considered in its determination of whether she remained eligible to continue to receive maintenance under KRS 403.200(2). Additionally, the language of the Agreed Order clearly states that upon the receipt of the disability benefit stipend, Ms. Damron's maintenance payments were to be *reduced* by the amount of the disability benefit. She has never been entitled to any amount of maintenance simply because she has been determined to be disabled.

Finally, Ms. Damron contends under *Mudd v. Mudd*, 903 S.W.2d 533 (Ky. App. 1995), "that maintenance payments which have accrued generally become vested when due, and further modifications of ongoing obligations are generally given prospective application." While this is a generally established principle, the *Mudd* case also holds that a trial court has the discretion to grant a retroactive reduction in maintenance for the period of time from filing the motion to the entry of the judgment. Therefore, the family court did not abuse its discretion granting the deduction of the overpayment for the six months between when Mr. Damron's motion was filed on March 21, 2012, to the time the order was entered on September 21, 2012, from the total remaining maintenance obligation.

#### **IV. CONCLUSION**

For these reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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