

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001990-MR

STEPHEN WALTERS

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
v. HONORABLE LUCINDA CRONIN MASTERTON, JUDGE
ACTION NO. 11-CI-00947

TAMBRA WALTERS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, DIXON AND MAZE, JUDGES.

DIXON, JUDGE: In this dissolution of marriage action, Stephen Walters appeals the final judgment of the Fayette Circuit Court, contending the court erred in its determination of the amount of maintenance awarded to Tambra Walters. After careful review, we affirm.

Stephen and Tambra were married for thirty-four years. At the time of the divorce, Tambra was 52 and Stephen was 53. During the marriage, Tambra

occasionally held part-time jobs; however, her primary role was homemaker and caregiver for the parties' four children. At the beginning of the marriage, Stephen worked in his family's coal mining business. In 1995, Stephen sought a career change and decided to attend medical school in Pikeville, Kentucky. When Stephen finished school, the family moved to Lexington so Stephen could complete a four-year hospital residency program. Between 2003 and 2004, Tandra worked part-time for the United States Postal Service as a rural carrier. Tandra was involved in a serious automobile accident while working for the post office, and she sustained significant injuries to her face and neck.

After Stephen completed his residency, he accepted a position as an anesthesiologist at the Pikeville Medical Center. Tandra remained in Lexington, where two of their children were in high school, and Stephen split his time between Pikeville and Lexington. Stephen filed for divorce in March 2011.

The parties resolved the majority of their property and debt issues in a partial separation agreement. The trial court held a final hearing to address certain disputed issues, including the amount and duration of maintenance. At the time of the hearing, Stephen's annual income was \$425,000.00, and Tandra was receiving \$2,190.00 per month in temporary workers' compensation benefits. Each party submitted an itemized monthly budget to the court. Stephen's monthly expenses were \$16,123.15, and Tandra's monthly expenses were \$11,712.81. The court heard lengthy testimony from the parties regarding Tandra's request for a lifetime maintenance award of \$10,000.00 per month. Stephen opined that Tandra's

request was unreasonable and argued that \$6,000.00 per month was a proper amount.

After hearing the testimony and receiving evidence, the court rendered findings of fact, conclusions of law, and a decree dissolving the parties' marriage.

In reaching its decision, the court noted:

Since Steve started working at Pikeville Medical Center, he has earned millions from the practice of medicine plus he has received income from his coal company that has, at times, been substantial; yet the parties have made the choice throughout their marriage to spend virtually all the income, both to support their children beyond the level which most people would choose to do and to support their own nice lifestyle. The net result is the parties only accumulated a marital estate of about \$200,000, which is minimal relative to the marital income and lifestyle.

The court awarded Tambra lifetime modifiable maintenance of \$10,000.00 per month. Stephen now appeals.

In *Age v. Age*, 340 S.W.3d 88 (Ky. App. 2011), this Court explained,

KRS 403.200(1)(a) and (b) set out the required findings for an award of maintenance. There must first be a finding that the spouse seeking maintenance lacks sufficient property, including marital property, to provide for his reasonable needs. Secondly, that spouse must be unable to support himself through appropriate employment according to the standard of living established during the marriage. Then, in addition to the statutorily required specific findings, the trial court is required to consider the statutory factors in KRS 403.200(2).

Id. at 95 (internal citations and quotation marks omitted).

Stephen takes issue with the court's finding that Tambra's monthly budget was reasonable, as he contends six of her categorized expenses were inflated. Stephen deems the award excessive, contending he is forced "to spend all of his money on his ex-spouse."

The trial court engaged in a detailed examination of the statutory factors when analyzing Tambra's request for maintenance. The court specifically found that Tambra was unable to provide for her reasonable needs with her temporary workers' compensation income and minimal amount of marital property apportioned to her. The court also concluded that Tambra was unable to support herself through appropriate employment, specifically noting Tambra's ongoing health problems, her age, and her lack of education. The court's findings stated, in relevant part:

f. Both parties focused their proof at trial largely on establishing the standard of living during the marriage; a factor the Court must consider under KRS 403.200(2)(c). Tambra's exhibit which set out a side-by-side comparison of the line items in the parties' respective monthly budgets was helpful to the Court in determining their standard of living. The Court finds that Tambra's claimed monthly expenses of \$11,712 are entirely reasonable as compared to the standard of living established during the marriage. Steve's budgeted monthly expenses exceeded Tambra's for some categories and Tambra's exceeded Steve's for others. The Court finds the parties' overall budgeted expenses were comparable for housing and utilities, automobile expenses, charitable giving, clothing, entertainment, gifts, food, and dining out. Tambra's budgeted future medical and dental expenses were higher than Steve's but the Court finds they are nevertheless reasonable given the chronic health problems she suffers from as a result of

her automobile accident. Also, Tambra will have a before-tax monthly expense for health insurance of approximately \$1,000 beyond the marriage. Steve's health insurance is provided at no cost to him as a benefit of his employment. As for travel, Tambra's monthly travel budget exceeded Steve's by a couple of hundred dollars, but much of Steve's travel is paid for as a benefit of his employment. Tambra will have no similar resource beyond the marriage. Both parties' monthly budgets included credit card payments. Steve's were particularly high. Steve's budget includes tremendous expenditures for the support of the parties' adult children. His criticism of Tambra's desire to have sufficient funds to be able to travel to see the children and so forth was unpersuasive. Steve also criticized Tambra's monthly budget item of \$500 for unscheduled expenses. The Court finds \$500 for unscheduled expenses to be reasonable given Tambra's ongoing health problems and the parties' established history of spending during the marriage. The Court also is concerned there is no line item in either party's budget for any retirement savings.

...

j. KRS 403.200(2)(f) requires the Court to consider the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance. Steve's monthly expense budget, net of what he had proposed to pay for maintenance, is \$16,123.15. Tambra's exhibit 1, which was stipulated to by the parties, evidences the cash that would be available to Steve from his \$425,000 per year salary, after deduction for all federal, state, and local taxes, and after paying the \$10,000 monthly maintenance requested by Tambra. That stipulated exhibit shows that Steve would have net cash available to spend of \$16,270 each month after paying the requested maintenance of \$10,000. Tambra's \$10,000 per month maintenance request would amount to 38% of Steve's net income and 28% of his gross. Adding Tambra's monthly workers compensation benefit of \$2,190 to Steve's monthly salary of \$35,417, results in a combined income pool of \$37,606. A \$10,000 maintenance award from Steve to Tambra would result in Tambra receiving 42% of the combined monthly income. These percentages are not unreasonable.

Moreover, the maintenance requested by Tambra added to her monthly workers compensation benefit only slightly exceeds her total monthly expense budget.

The amount and duration of a maintenance award is within the sound discretion of the trial court. *Gentry v. Gentry*, 798 S.W.2d 928, 937 (Ky. 1990). On appellate review, this Court will not disturb the lower court's decision unless its findings were clearly erroneous or it committed an abuse of discretion. *Perrine v. Christine*, 833 S.W.2d 825, 826 (Ky. 1992). In *Russell v. Russell*, 878 S.W.2d 24 (Ky. App. 1994), this Court explained:

It is appropriate to award maintenance when a party is not able to support themselves in accord with the same standard of living which they enjoyed during marriage and the property awarded to them is not sufficient to provide for their reasonable needs. Furthermore, where a former spouse is not able to produce enough income to meet their reasonable needs, it is appropriate to award maintenance.

Id. at 26 (internal citations omitted).

Stephen believes that certain items in Tambra's budget were unreasonable and that the amount of the award was excessive. We are mindful that the trial court was in the best position to assess witness credibility and weigh the conflicting evidence. *Croft v. Croft*, 240 S.W.3d 651, 655 (Ky. App. 2007). The court heard lengthy testimony from the parties, and the court carefully considered each of the statutory factors in its detailed analysis. Quite simply, the record reflects that the court set forth ample evidence to support both the amount and

duration of the maintenance award. We conclude the court did not abuse its discretion by awarding permanent maintenance to Tandra.

For the reasons stated herein, we affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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