



of maintenance, its division of marital property and award of attorney fees.

Wallace maintains that the amount and duration of the maintenance award was inadequate and that the trial court erred in failing to award to her all of her attorney fees, litigation expenses and court costs. We find no error and AFFIRM the Findings of Fact, Conclusions of Law and Final Order on appeal.

The parties were married on September 29, 1996, in Jefferson County, Kentucky and have no children together. On October 31, 2011, Wallace initiated divorce proceedings with the filing of a Petition for Dissolution of Marriage in Trimble Family Court. At the time of dissolution, Wallace was employed as a dental technician earning approximately \$40,000 per year. Cunningham worked for CNA Insurance Company as a risk control construction consultant earning about \$98,000 per year.

The matter proceeded in Trimble Family Court, whereupon a Limited Decree of Dissolution was rendered on July 24, 2012, with other matters reserved for later adjudication. On March 26, 2013, the court rendered its Findings of Fact and Conclusions of Law disposing of all remaining issues including maintenance, the division of marital assets and attorney fees. Specifically, the court awarded to Wallace the amount of \$1,000.00 per month for a period of three years from the date of judgment. The court also disposed of all marital property on a 50/50 percent basis and awarded to Wallace the sum of \$2,500.00 to be applied to her attorney fees. This appeal followed.

Cunningham first argues that the Trimble Family Court erred in awarding maintenance in any amount to Wallace. He contends that Wallace has sufficient income to support herself through her employment as a dental technician and income of approximately \$40,000 per year. In addition, Cunningham maintains that Wallace has been cohabitating with another man since October, 2011, thus reducing her living expenses. The focus of his argument on this issue is that there is no substantial evidence of record to support the award of maintenance and that the Trimble Family Court erred in failing to so rule. In her cross-appeal, Wallace also contends that the award of maintenance was erroneous. However, she argues that the award was not "just" because it was only for \$1,000 per month, did not include the cost of her health insurance and was limited to 36 months. She contends that a just and proper award under the totality of the record would be \$1,486 per month for a period of 10 years.

As the parties are well aware, KRS 403.200 addresses maintenance in the context of a proceeding for dissolution of marriage and states that,

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that 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 or is the custodian of a child whose condition or circumstances make it appropriate that the

custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering 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, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(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.

Upon examining these factors and applying them to the trial record, the Trimble Family Court determined that an award of \$1,000.00 per month for a term of three years was appropriate. In reaching this conclusion, the court mirrored the language of KRS 403.200(1)(a) in determining that Wallace met her burden of proof by demonstrating that she lacks sufficient property, including marital property apportioned to her, to provide for her reasonable needs. While it

is true that Wallace was and perhaps still is employed as a dental technician, what constitutes sufficient property and income is a subjective determination that falls within the discretion of the trier of fact. *Clark v. Clark*, 782 S.W.2d 56, 60 (Ky. App. 1990). As to maintenance, “unless absolute abuse is shown, the appellate court must maintain confidence in the trial court and not disturb the findings of the trial judge.” *Id.* We may not substitute our own judgment for that of the trial court on the weight of the evidence with regard to issue of maintenance where the trial court's decision is supported by substantial evidence. *Macleon v. Middleton*, 419 S.W.3d 755, 775 (Ky. App. 2014). Upon examining the entire record, which contained sometimes conflicting evidence as to extent of Wallace's living expenses and how those expenses were allegedly mitigated by her cohabitation with her apparent boyfriend, we must conclude that substantial evidence is found in the record sufficient to support the trial court's award of maintenance. We find no error on this issue.

Cunningham next argues that the Trimble Family Court erred in dividing the marital assets on a 50/50 basis. Though this division was applied to all marital assets, Cunningham directs our attention to the two largest marital assets, i.e., the net equity of a Trimble County farm owned by the parties during their marriage and their respective retirement accounts. Cunningham sought an approximate 67/33 division of all marital assets based on the parties' respective incomes between 2004 and 2011. He testified below that these percentages accurately reflected the division of income during the marriage since 1996.

Cunningham directs our attention to the "all relevant factors" analysis as set out in KRS 403.190(1), and contends that the trial court improperly applied this analysis to conclude that all marital assets should be divided equally between the parties.

KRS 403.190 states,

(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom;

- (b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
- (c) Property acquired by a spouse after a decree of legal separation;
- (d) Property excluded by valid agreement of the parties; and
- (e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

Cunningham does not contend that the assets at issue were improperly characterized as marital in nature. Rather, he maintains that they were not properly divided. The dispositive question for our consideration, then, is whether the trial court divided the assets "in just proportions" in accordance with the statute. Determining what constitutes just proportions lies within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Hempel v. Hempel*, 380 S.W.3d 549, 553 (Ky. App. 2012). The test for abuse of discretion is whether the trial judge's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

In the matter before us, the Trimble Family Court closely examined the parties' incomes and assets, as well as the duration of the marriage, the parties' respective contributions to the marriage, the value of the property set apart to each party, and the other relevant factors listed in KRS 403.190. It went on to expressly conclude that its equal division of marital property constituted "just proportions".

Though Cunningham strongly asserts that the parties' unequal incomes during the marriage were not offset by the other relevant factors set out in KRS 403.190 - thus mandating a division of marital property in his favor - our sole consideration is whether the trial court's conclusion on this issue was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Goodyear, supra*. Because the decision was grounded on the record and the law, and was not otherwise arbitrary, unreasonable, unfair, or unsupported by sound legal principles, we must answer that question in the negative. We find no error.

Lastly, Cunningham argues that the award of \$2,500.00 in attorney fees to Wallace was erroneous. He takes issue with the court's basis for the award, to wit, that Wallace's income was substantially less than his income, and that she lacked savings or other sources of income to pay toward her fees. Cunningham contends that the 50/50 division of marital assets provides Wallace with sufficient resources to pay her own attorney fees. Conversely, in her cross-appeal, Wallace argues that the trial court's failure to award to her all of her attorney fees, costs and expenses makes the award unreasonable, and that she was entitled to an award of all of her attorney fees, costs and expenses.

KRS 403.220 addresses attorney fees and costs. It provides in relevant part that after considering the financial resources of the parties, the court may order a party to pay a reasonable amount of attorney fees to the other party. Such an award is "entirely within the discretion of the court." *Wilhoit v. Wilhoit*, 521 S.W.2d 512, 514 (Ky. 1975). As noted above, the test for abuse of discretion is

whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Goodyear, supra*. The Trimble Family Court's award of \$2,500.00 in attorney fees to Wallace was based on its analysis of the parties' incomes, assets and other relevant factors. The award represents more than half of Wallace's attorney fees at the time of judgment, which reflects the disparity in the parties' incomes. While the record could have supported a higher or lower award, or no award at all, we cannot conclude that the award rendered constitutes an abuse of discretion as it is reasonably related to the parties' incomes and other relevant factors. We find no error.

For the foregoing reasons, we AFFIRM the Findings of Fact, Conclusions of Law and Final Order of the Trimble Family Court.

ALL CONCUR.

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