RENDERED: NOVEMBER 17, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000086-MR

THOMAS FRANCIS LAMBE — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 11-CI-503339

JUDE MARIE LAMBE
(now WEBER) AND
ALLEN MCKEE DODD, ESQ. — APPELLEES

AND

NO. 2015-CA-001141-MR

JUDE MARIE WEBER — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 11-CI-503339

THOMAS FRANCIS LAMBE — APPELLEE

AND

NO. 2015-CA-001305-MR

THOMAS FRANCIS LAMBE APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 11-CI-503339

JUDE MARIE LAMBE
(now WEBER)
APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND D. LAMBERT, JUDGES.

ACREE, JUDGE: These three companion cases represent appeals from numerous orders of the Jefferson Family Court related to Thomas Lambe's maintenance and child support obligations paid to his ex-wife, Jude Marie Lambe (now Weber). We consolidated the matters in the interest of judicial economy. We affirm in each appeal.

FACTS AND PROCEDURE

In 2011, Thomas filed a petition to dissolve his nineteen-year marriage to Jude. The family court entered a decree of dissolution in 2013. The decree addressed child custody, child support, maintenance, the division of marital assets, and attorney's fees. Thomas appealed and Jude cross-appealed. Shortly thereafter, Thomas filed his first motion to modify child support and maintenance. The family court denied his motion, and Thomas again appealed.

The appeals were consolidated and addressed by a single opinion rendered on November 14, 2014. *Lambe v. Weber*, 2013-CA-000891-MR, 2014 WL 6092239 (Ky. App. Nov. 14, 2014), *disc. review granted* (Feb. 10, 2016) (ordered not to be published). We said, in part, in that previous opinion:

> Thomas and Jude were married on October 10, 1992. Two children were born during the marriage, Margaret born in December 1996, and Kevin born in September 1999. Thomas has been employed at General Electric for the past twenty-six years and is currently an Operations Manager. Jude is a stay-at-home mother who has not worked outside of the home in over sixteen years. . . .
>
> In the decree [of dissolution entered February 26, 2013], the family court restored each party's nonmarital assets and then divided the marital assets, including significant real property as well as numerous investment and brokerage accounts. Further, the family court awarded the parties joint custody of the two children and determined that their monthly expenses (excluding education costs) totaled $3,697. As such, the family court ordered Thomas to pay child support in the amount of $2,150.09 per month in addition to the $108 per month that he pays in health insurance for the children. The family court also determined that because of Margaret's health issues, Jude is currently unable to obtain full-time employment. The family court estimated that Jude's reasonable monthly living expenses are $5,800 (including

> 30%, or $1,440, of the children's living expenses) which requires taxable income of about $7,300 per month. Accordingly, Thomas was ordered to pay maintenance in the amount of $7,300 per month for a period of nine years.

Id. at *3-4.

In that opinion, this Court found the family court made two errors: (1) when the family court included a portion of the children's living expenses when calculating Jude's reasonable monthly expenses for maintenance; and (2) when it failed to make findings justifying a nine-year maintenance award. In all other respects, we affirmed the decree. Jude filed a petition for rehearing, which this Court denied, and subsequently sought discretionary review, which the Supreme Court granted on February 10, 2016, but solely to order this Court's opinion not to be published.

Meanwhile, back in the family court, before this Court's opinion was rendered in November 2014, Thomas filed a second motion to modify maintenance and child support. A hearing was held on October 2, 2014; both Thomas and Jude testified. Based on that testimony, the family court found Thomas's income, expenses and standard of living largely unchanged, and it calculated Thomas's reasonable living expenses to be $4,950 per month plus an additional $550 per month for Kevin's private school tuition and fees, bringing his total monthly costs to $5,500. The family court also found that Thomas had remarried and his spouse pays at least half of the household bills. Thomas testified he contributes $1,200 per month to cover his share of the mortgage and utilities. The family court noted

Jude remained unemployed, but found she was actively looking for work. Jude testified the marital home had sold and was scheduled to close a few days after the hearing. She also testified she had a contract on a new house that fell through the morning of the hearing. Her expected mortgage was to be around $1,800 per month for a new home, which was a substantial increase from her prior mortgage payment of $572 per month. Jude testified she is also paying $352 per month for her share of Kevin's tuition and fees.

The family court entered an order on October 14, 2014, denying Thomas's motion to modify maintenance and granting his motion to modify child support. Regarding maintenance, the family court found Thomas's expenses and income unchanged since trial, but that Jude's expenses would substantially increase following the imminent sale of the marital residence. It also noted that the parties divided Kevin's education expenses in proportion to their income, so they were equally affected by that expense.

Regarding child support, the family court found that Margaret no longer resided with Jude nor had she resided with her since about May 10, 2014. For several months, Margaret was in and out of various treatment facilities.[1] At the time of the hearing, she was residing at the Eating Recovery Center in Denver, Colorado, but the parties expected to soon move her to a boarding school that would cost between $10,000 and $12,000 per month. Because Margaret no longer resided with Jude, the family court modified Thomas's child support obligation. It

[1] Margaret suffers from juvenile diabetes and severe eating disorders.

found Kevin's monthly living expenses to be $2,557, which represented "half of the previously-determined children's expenses, with an adjustment for the increased mortgage payment." (R. 629[2]). The family court ordered Thomas to pay child support of $1,451.77 per month effective immediately; it declined to apply the reduction retroactively to the date of Thomas's motion.

The family court subsequently denied Thomas's CR[3] 59.05 motion to alter, amend, or vacate the October 14, 2014 order. Thomas appealed (2015-CA-000086-MR).

Shortly thereafter, Jude moved to hold Thomas in contempt for failing to pay maintenance and child support as ordered. A hearing was held on February 5, 2015. Jude testified Thomas was $6,532.12 in arrears, and that she tried to resolve the issue with Thomas informally and through her attorney, all without success. She admitted she had recently received a $100,000 inheritance, but testified the monies went to cover her substantial attorney's fees. Jude also testified she recently obtained employment and is making $25,000 per year; she is paying 39%, or $4,680, of Kevin's school tuition; and she is paying 39%, or $2,730, of Margaret's medical expenses.[4]

Thomas testified he is simply unable to pay all the expenses and costs ordered. He explained he earns $5,440 (net) every two weeks and from that he pays $4,350 to Jude to cover his child support and maintenance obligations. From

[2] More specifically, this is that part of the circuit court record prepared and certified by the circuit clerk for the fourth appeal, 2015-CA-000086-MR.
[3] Kentucky Rules of Civil Procedure.
[4] The parties testified at the hearing that Margaret's medical expenses averaged $7,000.

the remaining amount, Thomas testified he is required, but unable, to pay his share of Kevin's tuition and Margaret's medical bills along with his own personal expenses. Thomas testified, at the time of the hearing, he had $95,000 in savings representing his share of the proceeds from the sale of the marital residence.

The family court, by order entered February 13, 2015, granted Jude's contempt motion. The family court found that, based on Thomas's exhibits, between July 2013 and January 2015, Thomas had a net income of $11,956 per month which was sufficient to pay his maintenance and support obligations. The family court reiterated that Thomas is remarried and his spouse pays the majority of his living expenses. The family court concluded that Thomas has the financial resources to meet his court-ordered obligations, considering his regular income and his investments, but he has chosen not to, and therefore the family court found Thomas to be in contempt. Upon denial of his CR 59.05 motion, Thomas appealed (2015-CA-001305-MR).

Thomas then filed another motion to modify maintenance on March 25, 2015. Following a hearing, the family court issued these findings regarding Thomas: (1) he continues to work in the same capacity for General Electric; (2) his salary and expenses are unchanged; and (3) he has remarried and his spouse pays the majority of the household bills, so in fact, his living expenses have decreased. Regarding Jude, the court found: (1) she recently obtained employment after a twenty-year hiatus; (2) she earns $25,000 per year, which yields a monthly gross income of $2,082 and a grossly net income of $1,561.50; and (3) her reasonable

monthly living expenses are $5,009.50, leaving her with a gross shortfall of about $4,310.00. The family court concluded Thomas had sufficient income to satisfy Jude's shortfall and reduced his maintenance obligation from $7,300 per month to $4,310 per month effective with the date of his motion. Both parties moved to alter, amend, or vacate the order. The family court denied the motions, and Jude appealed (2015-CA-001141-MR).

Additional facts will be discussed as needed.

APPEAL NO. 2015-CA-000086-MR

In this first matter, Thomas appeals from the family court's October 14, 2014 order denying his motion to reduce maintenance and granting his motion to reduce child support. We will discuss maintenance first, and then child support.

A. Maintenance

Thomas argues the family court abused its discretion when it declined to modify his maintenance obligation. He contends the family court erred when it: (1) found there was no substantial change in circumstances warranting modification; (2) failed to consider Thomas's net, as opposed to gross, income; (3) relied upon Jude's testimony as to the amount of her future mortgage; and (4) failed to reduce Jude's maintenance award in proportion to its reduction of Thomas's overall child support obligation.

Modification of a maintenance award is permissible "only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable." KRS[5] 403.250(1). Unconscionable means "manifestly unfair or inequitable." *Combs v. Combs*, 787 S.W.2d 260, 261 (Ky. 1990) (citation omitted); *Tudor v. Tudor*, 399 S.W.3d 791, 793 (Ky. App. 2013). "To determine whether the circumstances have changed, we compare the parties' current circumstances to those at the time the court's separation decree was entered." *Block v. Block*, 252 S.W.3d 156, 160 (Ky. App. 2007).

"We review the family court's determination regarding a motion to modify maintenance for an abuse of discretion." *Block*, 252 S.W.3d at 159. The factual findings underlying such a decision, however, can be disturbed only if they are clearly erroneous. *Id.* A finding of fact is not clearly erroneous if it is supported by "[e]vidence that a reasonable mind would accept as adequate to support a conclusion and evidence that, when taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable [persons]." *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnotes and quotations omitted).

(i) Substantial Change in Circumstances

Thomas contends the family court ignored three substantial changes in circumstances that rendered the maintenance award unconscionable: (1) Jude's receipt of a substantial inheritance; (2) Margaret's departure from Jude's home,

[5] Kentucky Revised Statutes.

thus allowing Jude to obtain employment; and (3) Kevin's graduation from eighth grade. Thomas asserts each individual circumstance, and all three collectively, constitute a substantial change in circumstances necessitating modification.

Thomas argues the family court erred when it failed to consider Jude's receipt of a substantial inheritance as a substantial change in circumstances. Jude testified at the October 2014 hearing she had recently inherited $113,000 following the death of her mother, but only $60,000 of that inheritance remained. Thomas contends Jude's inheritance was a significant step forward in "rehabilitating" Jude and allowing her to become self-sufficient. In support, Thomas relies upon two cases from this court: *Roberts v. Roberts*, 744 S.W.2d 433 (Ky. App. 1988) and *Aubrey v. Aubrey*, 2009-CA-000619-MR, 2010 WL 668755 (Ky. App. Feb. 26, 2010).[6]

In *Roberts*, the former wife receiving maintenance moved to modify it after learning her former husband inherited real property when his second wife died. He "sold this property for approximately $60,000 and invested the sales proceeds. Mr. Roberts currently receives approximately $325 per month in interest income from this investment . . . ." *Roberts*, 744 S.W.2d at 435. This Court affirmed the trial court's decision to increase the paying party's maintenance obligation. We held that interest income derived from an inheritance served as a sufficient showing of changed circumstances so substantial and continuing as to make the terms of the award unconscionable. In so holding, the Court focused on

[6] *Aubrey* is both factually distinguishable and non-binding authority; it warrants no discussion.

the fact that modifying maintenance based on this new income created an equitable outcome for the parties. *Id.*

It is worth noting that *Roberts* held that the *interest income* from an inheritance could be considered in determining the paying party's ability to pay increased maintenance. *Id.* Here, the focus is not on interest income, but the inheritance itself. Jude's inheritance is not a continuing change in circumstances, but a static, one-time event. Interest income from an investment such as Roberts made of his inheritance produces a continuing stream of monthly income. Even in *Roberts*, the court cautioned that "the mere showing that [a party] received an inheritance would probably not alone be enough to warrant a change in the maintenance award[.]" 744 S.W.2d at 437.

Unlike the parties in *Roberts*, we perceive no similar equitable outcome for the parties before us. Modifying maintenance requires a *substantial* and *continuing* changed circumstance that renders the maintenance award unfair or inequitable. While $100,000 is not insubstantial, it is also not excessive when viewed in light of the generous and privileged lifestyle of the parties during the marriage. And perhaps most importantly, we do not think Jude's inheritance rendered the maintenance award unfair or inequitable. Jude testified almost half of her inheritance had already been depleted to cover her mounting attorney's fees, and the rest earmarked for Margaret's medical expenses and substantial boarding school costs.

Thomas next argues Margaret's departure from Jude's home constituted a continuing change in circumstances requiring a maintenance modification. In Margaret's absence, Thomas argues, Jude could seek full-time employment and obtain self-sustainability. Thomas contends Margaret had not lived with Jude since May 2014, giving Jude almost a half year to obtain employment.

The family court addressed this issue directly in its December 2014 order denying Thomas's CR 59.05 motion. The family court said:

> [Jude] has not been gainfully employed since 1995, as reflected in the Court's original Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage. At the time of trial, two vocational experts testified that she would need additional computer and job skills training before returning to work. Both agreed that she would not be able to work until her daughter Margaret's medical condition stabilized. [Jude's] expert, Linda Jones, believed that it would take nine months to a year to find suitable employment once she was able to commit to the job search process. Margaret moved to a residential treatment facility on or about May 10, 2014[.] . . . Therefore, [Jude] is no longer in a full-time care giving role for the child. The Court believes [Jude's] testimony that she is actively seeking employment and improving her work skills. The Court also believes that it would take her some time to re-enter the workforce, consistent with the evidence submitted at trial. The Court expects that [Jude] will continue to look for work and will consider imputing income to her in the future if she does not become gainfully employed in a reasonable time.

(4th Appeal, R. 741-42).

Though Margaret left Jude's home in May 2014, Margaret's future was unknown and ever changing for several months following her departure. Margaret first went to a residential eating disorder treatment center near Chicago, Illinois, before attending the Eating Recovery Center in Denver, Colorado. It could hardly be said that Margaret had stabilized by summer 2015, and it was reasonable for Jude to delay or limit her job search during this period. Further, Jude testified she had been actively searching for employment for months, and the family court found her testimony reliable and convincing. Thomas's displeasure with Jude's lack of progress is not grounds to modify maintenance.

Thomas also asserts the family court abused its discretion in failing to consider as a changed circumstance Kevin's graduation from eighth grade and subsequent enrollment at Trinity High School, a private school costing a substantial sum of money. Again, modification of maintenance is only warranted if the changed circumstances render the maintenance award unfair or inequitable. As noted by the family court, both parties shared this increased expense in proportion to their respective incomes. It equally affected them both. Nothing about it rendered Thomas's current maintenance obligation unfair or inequitable.

Ultimately, we cannot say the circuit court abused its discretion when it found no changed circumstances existed which would warrant modifying Thomas's maintenance obligation to Jude.

(ii). Thomas's Income

Thomas contends the family court erred by failing to consider his *net* income when calculating maintenance.[7] He faults the family court for focusing on his *gross* income, as opposed to his *net* income, contrary to *Powell v. Powell*, 107 S.W.3d 222 (Ky. 2003). In *Powell*, our Supreme Court said, "We think that common sense dictates that a court consider the parties' net income when determining whether or not the spouse seeking maintenance will be able to meet his or her needs, as well as the payor spouse's ability to continue meeting his or her own needs." *Id.* at 226.

We are mindful that the family court, throughout its various orders, vacillated between Thomas's gross and net incomes. *Powell* holds, and we cannot disagree, that maintenance should be calculated based on the payor's net income. *Id.* However, we do not find the trial court's deviation from this guideline to be more than harmless error under these facts and, therefore, see no need to disturb the family court's maintenance decision.

First, the family court found no changed circumstance warranting modification of maintenance in the first place. Therefore, there was no need for it to calculate Thomas's income.

Second, and as a corollary to the first, Thomas testified that his income had not changed. The family court found previously, and this Court

[7] Thomas extends his argument to child support and child-related expenses. That is, according to Thomas, the family court erred when it relied exclusively on his gross income when calculating child support and other children-related costs Thomas should pay. We disposed of this argument in Thomas's prior appeal to this Court, stating: "Finally, contrary to Thomas's argument, Kentucky employs the gross income method of calculating child support." *Lambe*, No. 2013-CA-000891, at *17 (citing KRS 403.212). Our opinion on this issue has not changed.

affirmed on appeal, that Thomas had an average ***net*** monthly income of $10,799. *Lambe*, No. 2013-CA-000891, at *16. Thomas argues to this Court that his monthly net income is $10,881.44. (Appellant's Brief, p. 8). The difference is negligible and irrelevant.

Third, Thomas testified that, although his expenses had increased due to Kevin's increased tuition, he had also remarried and his new spouse pays most his monthly expenses. Thomas's expenses have, in actuality, decreased since trial.

In light of these facts, to the extent the family court's reference to Thomas's gross income was error, it was most certainly harmless. CR 61.01.[8] We see no need to disturb the family court's decision.

(iii). Jude's Future Mortgage

Thomas asserts the family court erroneously relied upon Jude's "unproven" representation as to the amount of her future mortgage. He claims the family court abused its discretion by presuming that Jude would have a mortgage payment of $1,800 per month and by using that as a reason to deny his motion to reduce maintenance. We are not convinced.

[8] CR 61.01 provides:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Jude's testimony was the best evidence available at the time of the hearing. The marital home was indisputably sold and scheduled to close within a few days. Jude had to obtain new housing. She testified she had a contract on a new house – and the mortgage was calculated to be $1,800 per month – but that the seller backed out of the contract the very morning of the hearing. Jude had no opportunity to evaluate other housing options prior to the October hearing. Her testimony as to her expected $1,800 mortgage was both understandable and the best, if not only, evidence available at the time. It was not unreasonable for the family court to rely upon her testimony.

(iv). Removal of Children's Expenses from Maintenance Calculation

Thomas's final maintenance-related argument is that the family court abused its discretion when it failed to reduce Jude's maintenance award, which included her portion of the children's expenses, in proportion to its reduction of Thomas's overall child support obligation. Thomas's argument relates back to the family court's method of calculating its initial maintenance award. As previously explained, the family court originally found Jude's reasonable monthly expenses to be $5,840. Of that amount, $4,400 represented Jude's personal living expenses and $1,440 represented Jude's share (39%) of the children's total living expenses ($3,967). To meet these expenses, the family court surmised Jude required $7,300 per month in taxable income and ordered Thomas to pay this amount in monthly maintenance.

In the first appeal, this Court found fault with the family court's calculations. Specifically, we held that family court erred when it included a portion of the children's expenses when calculating Jude's total monthly living expenses. Thomas argues in his brief that "because the [original] maintenance award included the children's expenses, the Family Court should have reduced the maintenance award in proportion to its reduction in the children's expenses. But it did not, despite having knowledge that this Court had reversed the original Judgment that included Ms. Weber's portion of child support in Mr. Lambe's maintenance obligation." (Appellant's Brief, p. 14). We disagree.

This Court's November 2014 opinion had not yet been rendered when the family court issued its order in October 2014. We can hardly fault the family court for failing to foresee the future.

Second, though Thomas brought this Court's opinion to the family court's attention in December 2014, our opinion was not yet final. Jude had filed a petition for rehearing, and thereafter moved for discretionary review, all of which stayed the effect of our decision. CR 76.30(2)(d) ("Unless otherwise ordered, . . . in no event shall an opinion become final pending final disposition of a timely petition [for hearing] under Rule 76.32 or a timely motion for [discretionary] review under Rule 76.20[.]").

Third, we disagree with Thomas that the family court should have reduced Jude's maintenance award to account for the reduced amount of children-related expenses now that Margaret was no longer living with Jude. Thomas

argues: "If [Kevin's] expenses were $2,557, as the Family Court found, and Mr. Lambe's 61% portion of that was $1,559.77, as the Family Court found, then Ms. Weber's 39% portion would be $997.23. Since Ms. Weber's maintenance award of $7,300 per month included her original child support obligation of $1,440 per month, the Family Court should have reduced her maintenance by the difference between $1,440 and $997.23 (i.e., $442.77)." (Appellant's Brief, p.14). While we fully understand Thomas's position, the family court appropriately addressed the situation. Shortly after this Court's opinion was rendered, the family court ordered Thomas to pay the relevant portion of the original maintenance award related to the children's expenses – $1,800 – into escrow pending finality of this Court's decision. (5th Appeal, R. 57). This is a reasonable and fitting action for the court to have taken. By doing so, Jude was receiving maintenance only to cover her expenses and nothing related to the children. We see nothing to convince us that the family court abused its discretion in a degree that would warrant reversal.

B. Child Support

Interestingly, Thomas next takes issue with the family court's decision to *decrease* his child support obligation. He contends the family court erred when it failed to: (1) make specific findings regarding Kevin's living expenses; (2) make the reduction in child support retroactive; and (3) impute income to Jude.

(i). Kevin's Living Expenses

Thomas argues the family court abused its discretion by failing to make specific findings on Kevin's living expenses. But Thomas fails to cite any

authority requiring the family court to do so. The family court in the original decree of dissolution calculated both children's combined monthly living expenses to be $3,697. We affirmed that number on appeal. *Lambe*, No. 2013-CA-000891, at *17 ("Nor do we find that the family court abused its discretion in establishing the children's monthly expenses, as such was supported by evidence of record."). Absent evidence to the contrary, which was not submitted in this case by either party, we decline to relitigate that determination by the family court. It stands.

Further, the family court adequately explained how it re-calculated Kevin's living expenses upon reducing child support in October 2014: "The Court finds that Kevin's monthly living expenses are $2,557. This represents half of the previously determined children's expenses [$3,697 / 2 = $1,848.50], with an adjustment for the increased mortgage payment." (R. 629[9]). Again, Jude testified her mortgage would increase from $572 per month to approximately $1,800 per month. The family court's calculation of Kevin's monthly living expenses is adequately explained and supported by the record.

(ii). Applying Child Support Reduction Retroactively

Thomas contends the family court abused its discretion when it declined to make the reduction in child support retroactive. "The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing." KRS

[9] In Appeal No. 2015-CA-000086-MR

403.213(1). Thomas moved to reduce child support on March 19, 2014. In its order granting Thomas's motion, the family court declined to apply the reduction retroactively and, instead, made it effective with entry of its order in October 2014. It said, in part:

> Although the Court recognizes that Mr. Lambe filed his motion in March [2014], the parties did not provide sufficient evidence as to when Margaret was in and out of Ms. Weber's home, so the Court cannot adjust the calculation accordingly. In addition, even if Margaret were in the home for a portion of any given month, her share of the regular household bills would be factored in. As the parties' proportionate share of the children's expenses is unchanged, the impact would likely be minimal.

(R. 629-30[10]).

Nothing in KRS 403.213(1) *requires* a family court to apply a child-support reduction retroactively. The statute uses the word "may" and that denotes a permissiveness that implicates the family court's discretion. *Alexander v. S & M Motors, Inc.*, 28 S.W.3d 303, 305 (Ky. 2000) ("When considering the construction of statutes, KRS 446.010[] provides that 'may' is permissive, and 'shall' is mandatory."). While it appears the family court subsequently recognized Margaret departed Jude's residence in May 2014, the rest of its explanation for declining a retroactive application is satisfactory to this Court. We cannot say the family court abused its discretion.

(iii). Imputing Income to Jude

[10] *Id.*

Thomas argues, again, that Jude can earn income and, since Margaret's departure from the home, nothing prevented Jude's employment of some kind. He faults the family court for declining to impute income to Jude.

KRS 403.212(2)(d) permits the family court to base child support on a parent's potential income if it determines that the parent is voluntarily unemployed or underemployed. Whether a party is voluntarily unemployed is a question of fact for the family court to resolve considering the totality of the circumstances. *Gossett v. Gossett*, 32 S.W.3d 109, 111 (Ky. App. 2000); *Polley v. Allen*, 132 S.W.3d 223, 227 (Ky. App. 2004).

We touched upon this issue earlier in our decision and reiterate that the family court was convinced, based on Jude's testimony, that she was actively seeking work and that, while Margaret left Jude's care in May 2014, her situation was far from stable for several months. This case illustrates why decisions such as this one are left to the family court's sound discretion. The family court in this case was, and is, thoroughly familiar with the parties, their respective situations, and the children involved. The family court was, and is, in the best situation to evaluate whether Jude was purposefully evading employment or sincerely trying to obtain work. Ultimately, we find no merit in Thomas's argument that the family court should have found Jude was voluntarily unemployed and should have imputed income to her.

C. Attorney's Fees

Thomas's final argument in this appeal is that the family court abused its discretion by awarding Jude $5,000 in attorney fees when no imbalance in financial resources existed between the parties. We find no abuse.

The family court retains "broad discretion in awarding attorney fees to either party in a dissolution proceeding." *Jones v. Jones*, 245 S.W.3d 815, 821 (Ky. App. 2008). In so doing, the family court "must consider the financial resources of both parties and may award attorney fees only where an imbalance of such resources exists." *Id.*; KRS 403.220. The family court "is in the best position to observe conduct and tactics which waste the court's and attorneys' time and must be given wide latitude to sanction or discourage such conduct." *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990). Provided "the record on appeal supports the trial court's determination of an imbalance in the parties' financial resources, an award of attorney fees will not be disturbed on appeal." *Jones*, 245 S.W.3d at 821.

In awarding Jude attorney's fees, the family court stated:

> As Mr. Lambe points out, both parties received a substantial amount of assets in this dissolution, and Ms. Weber was given a large maintenance award. However, Mr. Lambe has a much higher income than Ms. Weber, even after his maintenance obligation, and so the disparity in the parties' financial resources persists.

(4th Appeal, R. 743).

Thomas argues the family court failed to consider Jude's $113,000 inheritance and the income she earns from assets assigned to her in the divorce. Instead, Thomas contends, the family court focused solely on his earnings. He emphasizes, as he did in his first appeal, that Jude received substantial marital and nonmarital assets upon dissolution.

Thomas fails to mention in his brief that he, too, received substantial marital and nonmarital property upon dissolution. His income alone is not his sole source of funds. Thomas has an earning capacity significantly higher than Jude, and Jude was seeking, but had yet to secure, full-time employment. Further, the family court only ordered Thomas to contribute $5,000 toward Jude's attorney's fees, which were approaching $50,000 (including fees related to the parties' appeal of the original judgment) at that time. The amount awarded is not unreasonable. We cannot say the family court's decision to award Jude attorney's fees falls outside the "wide latitude" allowed in such matters. *Gentry*, 798 S.W.2d at 938.

D. Summary of Appeal No. 2015-CA-000086-MR

We affirm the October 14, 2014 order denying Thomas's motion to modify maintenance and granting his motion to modify child support.

APPEAL NO. 2015-CA-001305-MR

In the second appeal before us, Thomas asks review of the family court's February 13, 2015 order finding him to be in contempt for failing to pay maintenance and child support. He asserts the family court erred or abused its discretion: (1) by failing to find Thomas had a valid impossibility defense to the

contempt charge; (2) by failing to enter additional factual findings supporting its conclusion that Thomas's current spouse pays the majority of his living expenses; (3) by ignoring the testimony of Thomas's expert witness; (4) by finding Thomas's child-support arrearage to be $6,532.12; (5) by finding Jude had $60,000 in savings earmarked for Margaret's bills; (6) by finding Jude depleted her inheritance to pay her share of Margaret's medical bills; (7) by ignoring Thomas's failed attempt to obtain financing to purchase a new home; (8) by considering Thomas's receipt of one-half of the proceeds from the sale of the marital home, but ignoring that Jude received the same amount; and (9) by requiring Thomas to pay for Margaret's expenses since she is emancipated. We will address each of Thomas's arguments separately.

But first, we summarize the applicable law. This Court will only reverse a finding of contempt if the trial court abused its discretion in imposing the sentence. *Lanham v. Lanham*, 336 S.W.3d 123, 128 (Ky. App. 2011). "The test for abuse of discretion is whether the trial court's ruling 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). However, "we apply the clear error standard to the underlying findings of fact." *Commonwealth, Cabinet for Health and Family Serv. v. Ivy*, 353 S.W.3d 324, 332 (Ky. 2011). Contempt is "the willful disobedience of or the open disrespect for the court's orders or its rules." *Meyers v. Petrie*, 233 S.W.3d 212 (Ky. App. 2007) (citation

omitted). This Court is not unmindful of the broad contempt powers enjoyed by the courts. *Id.* at 215.

The family court, by order entered February 13, 2015, found Thomas to be in contempt for failing to pay court-ordered maintenance and child support. It said in its order, in part:

> [Thomas's] current maintenance obligation was ordered on February 13, 2013. . . . [Thomas] submitted a spreadsheet analysis of his income between July 22, 2013 and January 16, 2015, which shows an average gross monthly income of $17,021 and a net income of $11,956. . . . [Thomas] had sufficient funds to pay his maintenance and support obligation[.] As the Court previously noted, [Thomas] is remarried and his current spouse pays the majority of his living expenses. He contributes, or attempts to contribute, $1,200 per month toward the household bills.
>
> Margaret's repeated hospitalizations and her current boarding school expenses have caused a tremendous financial strain on both parties. As the Court previously stated, the parties will likely have to liquidate their investments to meet those costs. [Jude] has already depleted her inheritance money of around $100,000 to pay her share. [Thomas] pays the expenses from his regular income, which leaves him with insufficient funds to pay his maintenance and child support obligation. He did not say whether he had withdrawn any money from his personal investments to pay Margaret's bills. [Thomas] did acknowledge that he has about $95,000 in a bank account from the recent sale of the parties' former marital residence. [Jude] has $60,000 in an account that she established to pay Margaret's bills and $150,000 in sale proceeds from the home.
>
> [Jude] claims that [Thomas] is $6,532.12 in arrears of his maintenance and support obligation as of February 15, 2015. [Thomas] says that number is incorrect, but he provided no proof of payment. Accordingly, the Court

> finds that his current arrearage is $6,532.12. As discussed above, he has the financial resources to meet those obligations, considering his regular income and investments, but he has chosen not to. Therefore, he is in contempt.

(R. 56-57[11]).

Thomas first argues the family court erred or abused its discretion by failing to find a valid defense to the charge of contempt based on impossibility. He claims he lacks sufficient income to pay maintenance and child support along with other items the family court ordered him to pay, including Kevin's tuition, Margaret's medical expenses, and his own expenses. We are not persuaded.

"Civil contempt, the focus of this appeal, is 'the failure . . . to do something under order of court, generally for the benefit of a party litigant.'" *Crowder v. Rearden*, 296 S.W.3d 445, 450 (Ky. App. 2009) (quoting *Commonwealth v. Burge*, 947 S.W.2d 805 (Ky. 1996)). Civil contempt is designed "to coerce rather than punish." *Blakeman v. Schneider*, 864 S.W.2d 903, 906 (Ky. 1993). The civil contempt process is composed of several separate yet interrelated steps.

First, the party seeking a contempt citation must establish by clear and convincing evidence that the alleged contemnor has violated a court order and, if also seeking compensation, the amount must be proven. If the court is persuaded, a presumption of contempt is created and the burden of production shifts to the alleged contemnor. *Ivy*, 353 S.W.3d at 332. Here, Thomas admits he violated the

[11] Appeal No. 2015-CA-001141-MR and Appeal No. 2015-CA-001305-MR.

family court's orders by failing to make full support payments to Jude. (Appellant's Reply Brief, p. 1) ("Tom has never disputed that he failed to pay support payments to Jude[.]"). The focus of this appeal is on the second step – Thomas's defense of impossibility.

The alleged contemnor then has the opportunity to present clear and convincing evidence that he or she "was unable to comply with the court's order or was, for some other reason, justified in not complying. This burden is a heavy one and is not satisfied by mere assertions of inability." *Id.*

Kentucky has long held that "[t]he power of contempt cannot be used to compel the doing of an impossible act." *Lewis v. Lewis*, 875 S.W.2d 862, 864 (Ky. 1993); *Crowder*, 296 S.W.3d at 450 ("Whether civil or criminal, a party cannot be punished for contempt for her failure to perform an act which is impossible."). From this rose the defense of impossibility. The contemnor's inability to pay "must be shown clearly and categorically" and the contemnor "must prove that he took all reasonable steps within his power to insure compliance with the court's order." *Blakeman*, 864 S.W.2d at 906.

Thomas submitted evidence indicating he faces a monthly deficit of about $4,000. His calculation is as follows:

Net Income	$11,956
Less Maintenance	($7,300)
Less Child Support	($1,452)
Less Kevin's Tuition	($ 550)
Less Margaret's Expenses	($1,908)
Less court-ordered cost	($ 150)
Less his own expenses	($4,950)

-$4,354

(Appellant's Brief, p. 6). The shortcoming in Thomas's argument is his failure to acknowledge his other sources of funds beyond his regular income cash flow. Thomas admitted at the contempt hearing he has almost $100,000 in savings. This money, received from the sale of the marital residence, is more than sufficient to cover the $6,000 arrearage owed. Based on this testimony alone it is easy for this Court to reject Thomas's impossibility defense. And, as pointed out by the family court, Thomas has other investments from which he could draw, but has chosen not to, to pay his court-ordered obligations.

Additionally, while Thomas's monthly expenses equal almost $5,000, he testified previously that his spouse pays the majority of those expenses. Thomas testified he only contributes about $1,200 per month toward household costs. Factoring this into the equation further undercuts Thomas's impossibility defense.

Nor do we find any merit in Thomas's argument that the family court erred by not entering additional findings of fact supporting its finding that Thomas's current spouse pays the majority of his living expenses. Thomas himself said this at the October 2014 hearing, and the family court reduced it to an adjudicative fact in its October 14, 2014 Order. A "family court may take judicial notice of its own records and on its own initiative[,]" including its prior orders and the adjudicative facts contained in those orders. *S.R. v. J.N.*, 307 S.W.3d 631, 637

(Ky. App. 2010); KRE[12] 201(2). No additional findings were needed to support this fact.

Thomas also contends the family court ignored the testimony of his expert witness, Sally Mudd. Mudd, a certified public accountant, testified Thomas suffered from a negative cash flow of approximately $2,500 per month in 2015 and $2,800 per month in 2014. But Mudd's testimony suffered from the same defects as Thomas's testimony. It considered the full amount of Thomas's claimed monthly expenses, although Thomas's spouse pays the majority of those expenses, and it focused solely on Thomas's liquid cash flow, *i.e.* his monthly income, without consideration of his other investments. We are not convinced the family court simply ignored Mudd's testimony; instead, the court likely found Mudd's testimony cumulative to the extent it duplicated Thomas's testimony and unpersuasive to the extent it did not. In any event, the family court was not convinced that it was impossible for Thomas to pay his court-ordered responsibilities. We see nothing justifying reversal.

Thomas next takes issue with the family court's finding that he had a $6,532.12 arrearage. Thomas argues he was only $2,156.24 in arrears, and Jude inflated the arrearage amount by adding to it part of the February 2015 child support and maintenance owed, despite that the hearing occurred February 5, 2015.

When Jude filed her motion for contempt in November 2014, she attached an exhibit indicating Thomas had an arrearage of $2,015.68 at that time.

[12] Kentucky Rules of Evidence

At the hearing in February 2015, Jude testified the arrearage had increased to $6,532.12. She submitted a spreadsheet[13] along with cancelled checks in support of her testimony. Thomas testified he disagreed with the arrearage amount claimed by Jude, but presented no contradictory evidence. It was within the province of the family court, acting as the fact finder, to rely upon Jude's testimony and exhibits as to Thomas's arrearage amount. *Bailey v. Bailey*, 231 S.W.3d 793, 796 (Ky. App. 2007) (a family court operating as the fact finder is cloaked with broad discretion as to testimony presented, may make its own decisions regarding the demeanor and truthfulness of witnesses, and may choose whom to believe). We again see no error.

Thomas's next four arguments relate to factual findings made, or not made, by the family court. First, he contends there is no evidence in the record to support the family court's finding that Jude had $60,000 in savings earmarked for Margaret's medical expenses. But Thomas's attorney asked Jude on cross-examination during the February 2015 hearing if it was a fact that she had $60,000 in a bank account. Jude responded, "Yes, that money that I have is saved for Margaret's medical care." Jude's testimony supports the family court's finding. *Blakeman*, 864 S.W.2d at 906 (factual findings by the family court supported by the record are not clearly erroneous).

[13] The spreadsheet indicates between August 1, 2014 and February 1, 2015, Thomas owed $58,632.09 and paid $52,099.96, leaving an arrearage of $6,532.13. The February 1, 2015 amount owed was $4,375.00 and Thomas paid $4,140.00 toward that amount.

Second, Thomas asserts the family court erred in finding Jude depleted her inheritance to pay her share of Margaret's medical expenses. Thomas contends there is no evidence in the record to support such a finding. At the February 2015 hearing, Jude testified she depleted her inheritance to cover her attorney's fees. We agree with Thomas that it appears that family court made a factual error in its order. But this error certainly does not justify the relief Thomas requests, *i.e.*, to order the family court to vacate this finding and "remand with instructions for the Family Court to take [Jude's] inheritance into consideration as a changed circumstance which provides her with ample financial resources to meet her own needs." (Appellant's Brief, p. 11). The focus of this appeal is on *Thomas's* failure to pay court-ordered child support and maintenance. *Jude's* income and savings are, quite frankly, irrelevant. *See Ivy*, 353 S.W.3d at 332 (contempt proceedings address whether the *contemnor* violated a court order, whether the *contemnor* is vested with a valid defense, and fashioning a remedy). Any error by the family court on this particular statement is harmless. CR 61.01.

Third, Thomas argues the family court erred when it ignored his failed attempt to obtain financing to purchase a new home due to the fact that his expenses surpassed his income. He asserts this is directly relevant to the contempt proceedings, and should have been addressed by the family court. We do not fault the family court for choosing not to mention it in its order. The family court heard an abundance of evidence during the February 2015 hearing. It recounted the most salient points – that is, the evidence the family court, as fact finder, found most

convincing and applicable. Thomas's inability to obtain financing, while marginally relevant to the contempt inquiry, apparently did not sway the family court's decision. And this fact alone is not grounds for this Court to reverse the family court's contempt order.

Fourth, Thomas argues the family court erred when it considered his receipt of one-half of the proceeds from the sale of the marital home, but ignored that Jude received the same amount. Again, the focus of the contempt hearing was on *Thomas's* failure to abide by a court order and *Thomas's* ability, or inability, to pay court-ordered maintenance and child support. *See Ivy*, 353 S.W.3d at 332 (discussing contempt standards). The monies he received from the sale of the marital residence was relevant to this inquiry. Jude's financial status was not. Appeal of a contempt order is not the appropriate venue to challenge the underlying maintenance and child-support orders.

Finally, Thomas argues the family court erred by ordering him to pay for the medical expenses of Margaret, an emancipated child. Margaret turned eighteen years old in December 2014 and graduated high school in spring 2015. She emancipated at that time. KRS 403.213(3) ("In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student[.]").

Thomas failed to preserve this argument. By his own admission, he did not raise it before the family court and, instead, "preserved" it by including it in

his prehearing statement. One does not preserve an argument in this manner. Preservation occurs when a party raises an argument before the trial court. "[A] party is not entitled to raise an error on appeal if he has not called the error to the attention of the trial court and given that court an opportunity to correct it." *Little v. Whitehouse*, 384 S.W.2d 503, 504 (Ky. 1964). Substantively, an error not preserved need not be reviewed at all. *Summe v. Gronotte*, 357 S.W.3d 211, 216 n.6 (Ky. App. 2011).

We find no merit in Thomas's argument. As we have repeatedly explained, this appeal addresses the family court's February 2015 order holding Thomas in contempt for failing to pay court-ordered obligations, including expenses related to Margaret's medical needs, between August 2014 and February 2015. During that time, Margaret was a non-emancipated child whom Thomas was obligated by court order to support. Her subsequent emancipation in spring 2015 does not affect Thomas's failure to pay court-ordered amounts prior to emancipation.

Emancipation constitutes a material change in circumstances that is substantial and continuing. It was, and is, fully within Thomas's rights to move to modify the family court's support orders upon Margaret's emancipation. It is unclear whether he has done so. That, however, is the appropriate method for contesting continued payment of her medical expenses post-emancipation. Instead, Thomas has intertwined the emancipation issue with the contempt issue further muddying these waters. His failure to have the result desired is of his own making.

We affirm the Jefferson Family Court's February 13, 2015 Order holding Thomas in contempt.

APPEAL NO. 2015-CA-001141-MR

In this final matter, Jude appeals from the family court's June 20, 2015 order granting Thomas's motion to modify and reduce his maintenance obligation from $7,300.00 per month to $4,310.00 per month. She argues the family court abused its discretion: (1) in granting Thomas's request to decrease his maintenance obligation; (2) in admitting summary evidence propounded by Thomas as to Jude's living expenses; and (3) in denying Jude's request for attorney's fees.

We have previously discussed the standards related to maintenance modification. To summarize, briefly, maintenance may be modified if changed circumstances exist rendering the maintenance award unconscionable – that is, manifestly unfair or inequitable. KRS 403.250(1); *Combs*, 787 S.W.2d at 261. In ascertaining changed circumstances, we compare the parties' current circumstances to those at the time the court entered the decree. *Block*, 252 S.W.3d at 159.

The primary bases for initially granting Jude maintenance were her inability to obtain employment due to Margaret's medical conditions and that she had been absent from the workplace for eighteen years. Those barriers to employment have diminished.[14]

[14] Thomas testified at the May 2015 hearing that Margaret had left the Eating Recovery Center in Denver, returned to Jude's home, and graduated from high school. It appears Margaret's condition, as of May 2015, had improved.

Jude testified at the May 2015 hearing she had obtained employment in early 2015. She earns $25,000 per year. This step placed Jude on the path toward self-sufficiency. After all, the purpose of maintenance is not to require one party to wholly support the other, which is in keeping with a principal "goal of the dissolution process . . . to sever all ties as much as possible as soon as possible." *Daunhauer v. Daunhauer*, 295 S.W.3d 154, 156 (Ky. App. 2009). Because of Jude's employment, the family court was correct to find a changed circumstance justifying modification of Jude's maintenance award.

Jude's chief dispute is with the family court's calculation of her reduced maintenance amount. She first contends the family court erred in its computation of her monthly living expenses.

At the May 2015 hearing, Jude submitted a list of monthly living expenses that totaled $10,452. The family court found Jude overinflated her monthly costs by including expenses not part of the maintenance equation, such as: Kevin's private school tuition, extracurricular fees and orthodontics; Kevin's share of the household expenses; and Jude's attorney's fees. The court also found Jude overinflated her grocery expenses and income taxes. It found Jude's reasonable monthly living expenses to be $5,009.50.

Jude points out that, in February 2013, the family court found her total monthly living expenses to be $5,840. In May 2015, the family court noted that her living expenses had increased due to an enlarged mortgage payment and amplified medical bills, yet the family court found her monthly living expenses to

only be $5,009.50, $830 less than her previous living expenses. Jude claims these findings are irreconcilable. We disagree.

In February 2013, the family court found *Jude's* monthly living expense to be $4,400; the additional $1,440 that comprised the $5,840 total was attributable to the children. In May 2015, the family court took particular care, as directed by this Court in the first appeal, to focus only on Jude's reasonable expenses for maintenance purposes. It found those to be $5,009.50. Contrary to Jude's position, the family court increased, not decreased, Jude's monthly living expenses from $4,400 to $5,009.50. Its findings are reasonable.

Jude contends, in computing her living expenses, the trial court must include Jude's court-ordered expenses paid on behalf of the children. Again, this Court specifically, and unequivocally, ruled in the first appeal that expenses related to the children are not to be considered when determining a spouse's reasonable needs regarding maintenance. We said:

> There can be no question that awards of spousal maintenance and awards of child support are two distinctly separate concepts. Maintenance is for the needs of the recipient spouse, and the policies behind our maintenance statutes are rehabilitation and relative stability. . . . The purpose of the statutes and the guidelines relating to child support, on the other hand, is to secure the support needed by the children commensurate with the ability of the parents to meet those needs. . . .
>
> Although the term "reasonable needs" has not been specifically defined, it is clear that KRS 403.200(1) speaks in terms of whether the party seeking maintenance lacks sufficient property to provide for "his" reasonable

> needs and whether that party is unable to support "himself" through appropriate employment. . . .
>
> [W]e believe including the children's expenses within the purview of the "reasonable expenses" of the party seeking maintenance is a slippery slope with far-reaching implications. ***We conclude that in calculating the amount and duration of maintenance, the family court is not to consider any amounts expended by the party seeking maintenance for the care and support of a dependent child.***

Lambe, No. 2013-CA-000891, at *10-11, 13 (emphasis added). The family court was correct to exclude all children-related costs from Jude's reasonable monthly living expenses, including Kevin's school tuition, orthodontics, clothing, Margaret's mobile phone, Kevin's extracurricular costs, and Kevin's share of the general living expenses.

Jude also claims that the family court incorrectly found she had inflated her income taxes, although she used the same tax amount used by the family court in the decree of dissolution. In the decree, the family court estimated Jude would pay $1,500 per month in taxes on a $7,300 monthly maintenance award. Jude used that same $1,500 tax figure in calculating her monthly expenses in May 2015. But the family court was correct to find that amount inflated in light of its decision to reduce Jude's maintenance amount. Jude would not be paying the same amount in taxes on a $4,300 award as she would on a $7,300 award.

Jude next states she did not inflate her grocery expenses. At the May 2015 hearing, Jude indicated she spent $1,200 per month on groceries. We agree with the family court this amount is inflated and includes groceries for the

children. In 2012, Jude claimed this same amount for groceries, only she indicated at that time that it was for her *and* the children. We cannot say the family court abused its discretion on this item.

Jude asserts many of her other living expenses were not disputed at the May 2015 hearing. But Thomas did, in fact, dispute most of Jude's claimed expenses, including: medical expenses, health insurance, mobile phone, utilities, dry cleaning, newspapers, sports/exercise, auto repairs/maintenance, and auto license/taxes. Thomas submitted evidence countering the amounts claimed by Jude. The family court weighed and considered all the evidence presented before reaching a reasonable figure. We will not substitute our judgment for that of the family court in this instance.

Along these same lines, Jude argues the family court abused its discretion in admitting summary evidence propounded by Thomas as to Jude's living expenses. She argues she had no opportunity to review Thomas's exhibits or confirm their accuracy. The exhibits contested by Jude include, allegedly, line items from Jude's bank account and credit card statements purporting to display amounts spent by Jude each month on certain items, such as dry cleaning, auto license/taxes, and other expenses claimed by Jude.

Jude claims that the admission of Thomas's exhibits amounted to an abuse of discretion because she had already provided her bank account statements and credit card statements to the family court. Thomas argues no abuse occurred because the only difference in the bank and credit card statements themselves (as

submitted by Jude) and Thomas's exhibits is that Thomas categorized the items by *type* rather than by *date*, as normally shown in bank/credit card statements. We cannot locate in the record the exhibits at issue (other than their identification as Thomas's Exhibits 17-34 from the May 2015 hearing) and, therefore, cannot review them. Meaningful review on this point is hampered, if not impossible, and we will assume the missing portions of the record support the family court's decision. *Smith v. Smith*, 450 S.W.3d 729, 732 (Ky. App. 2014) ("It has long been held that, when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court." (citation omitted)). We decline to reverse on this basis.

Jude also contends the family court erred in reducing her maintenance award from $7,300 per month to $4,300 per month. She argues the $2,990 monthly reduction was unconscionable considering her limited increase in income. At the very least, Jude asserts, her maintenance award should only have been decreased by $1,561, her net monthly income. But this is substantially what the family court did. As noted numerous times in this opinion, the original maintenance award included Jude's portion of the children's expenses; of the $7,300 awarded, $1,800 was attributable to the children's expenses, and $5,500 was attributable to Jude's expenses.[15] (R. 401[16]). The family court, as directed by this Court, specifically excluded the children's expenses when re-calculating

[15] Thomas had been paying $1,800 of his monthly maintenance obligation into escrow since February 2015 pending finality of this Court's opinion in the first appeal.
[16] Appeal No. 2015-CA-001141-MR and Appeal No. 2015-CA-001305-MR.

maintenance in May 2015. After considering Jude's reasonable monthly expenses and income, it concluded Jude had a monthly shortfall of $4,310. Thomas's maintenance obligation was reduced to that amount. In reality, then, the family court reduced Jude's monthly maintenance award from $5,500 to $4,300, a $1,200 (not a $2,990) decrease. Jude's complaint lacks merit.

Finally, Jude contends the family court abused its discretion in denying Jude's request for attorney's fees. As previously explained, "KRS 403.220 authorizes a trial court to order one party to a divorce action to pay a 'reasonable amount' for the attorney's fees of the other party, 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). In its June 10, 2015 order, the family court ruled each party shall pay his or her own attorney's fees related to the motion. "[E]ven if a [financial] disparity exists, 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.'" *Addison v. Addison*, 463 S.W.3d 755, 766 (Ky. 2015) (quoting *Neidlinger*, 52 S.W.3d 519). We see no abuse of discretion.

Accordingly, we affirm the June 10, 2015 order granting Thomas's motion to reduce maintenance.

CONCLUSION

For the foregoing reasons, each of the Jefferson Family Court orders from which appeal has been taken in these consolidated appeals is affirmed.

KRAMER, CHIEF JUDGE, CONCURS.

D. LAMBERT, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

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