

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001155-MR

DAVID R. BAUERS

APPELLANT

v.

APPEAL FROM CARTER CIRCUIT COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 12-CI-00362

TERESA GILBERT BAUERS

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, DIXON, AND STUMBO, JUDGES.

DIXON, JUDGE: In this divorce action, David R. Bauers previously appealed the final judgment of the Carter Circuit Court, contending the court erred by awarding maintenance to Teresa Gilbert Bauers. In *Bauers v. Bauers*, 2014-CA-001369-MR, 2016 WL 3176413 (Ky. App. May 27, 2016), this Court reversed the portion of the circuit court's judgment awarding maintenance and remanded the matter to the court for additional findings required by KRS 403.200(1)(a). Thereafter, the

court rendered its judgment on remand with additional statutory findings and awarded permanent maintenance to Teresa. David now appeals the court's judgment on remand, arguing the award of maintenance was not supported by the evidence. Finding no error, we affirm.

Teresa filed for divorce in September 2012, following 27 years of marriage. At that time, David worked at the county road department earning \$32,000 per year, and Teresa worked as a seamstress in a factory earning \$29,000 per year. Prior to their separation, the parties raised cattle on their farm, which resulted in additional income of approximately \$20,000 per year. In early 2014, Teresa lost her job when the factory closed, and she began receiving unemployment benefits.

A bench trial was held May 29, 2014. At that time, Teresa was 50 years old and had a high school education. She testified she had 14 weeks of unemployment benefits remaining, which was her only source of income. Teresa did not have any retirement accounts, and her health insurance was through David's employment. Teresa asserted the parties' farming operations ceased when they separated, and she felt she could no longer make a living off of the farm. Teresa's estimated monthly budget was approximately \$950; however, that did not

include the anticipated cost of health insurance.¹ Teresa requested maintenance of \$500 per month. David, 49 at the time of trial, opposed maintenance and argued his own monthly budget was \$1899.

In its judgment on remand, the court awarded Teresa the farm property, valued at \$152,000.² The court equally divided the marital bank account, awarding Teresa approximately \$30,000, and the court assigned Teresa one-half of David's pension³ pursuant to a Qualified Domestic Relations Order. The court awarded David two tracts of land valued at approximately \$100,000; however, the court assigned the entire marital debt of \$54,000 to Teresa to equalize the value of the real estate assigned to each party. Finally, the court found Teresa was entitled to permanent maintenance of \$250.00 per month. The court specifically found Teresa's only assets were the marital property awarded to her and concluded those assets were insufficient to provide for her reasonable needs. The court further noted Teresa was unemployed and, considering her age and education, she would

¹ Teresa's budget also did not include cable television or telephone service. Teresa testified those services had been in David's name, and he canceled them after moving from the marital residence. Teresa could not afford to re-connect the services, which were approximately \$200 per month.

² According to the appraisal, the tract included 93 acres. The acreage was valued at \$83,700; a metal barn was valued at \$20,000; a detached carport was valued at \$2000; and the marital residence was valued at \$46,300.

³ At the time of trial, David's pension account totaled approximately \$56,000.

be unable to support herself according to the standard of living established during the marriage.

On appeal, David contends Teresa was not entitled to maintenance because the marital property she received was sufficient to meet her reasonable needs. David concedes this argument was not preserved for appeal, and he requests palpable error review.

An unpreserved error constitutes a palpable error only where a party's "substantial rights have been affected and a manifest injustice has resulted from the error." *Childers Oil Co., Inc. v. Adkins*, 256 S.W.3d 19, 27 (Ky. 2008). "Manifest injustice is found if the error seriously affected the fairness, integrity, or public reputation of the proceeding." *Kingrey v. Commonwealth*, 396 S.W.3d 824, 831 (Ky. 2013).

An award of maintenance is governed by KRS 403.200, which states in relevant part:

(1) [T]he 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

Here, David emphasizes Teresa received the marital home/farmland (appraised at \$152,000), \$30,000 in cash, and one-half of his pension. While we acknowledge David's argument, the record clearly reflects Teresa was also assigned the entire marital debt of \$54,000. Further, it was undisputed Teresa would lose her health insurance coverage through David's work, and she hoped to be able to purchase a policy for herself after the divorce. Teresa's testimony also established the parties' farming operations ceased when they separated, and she felt she could not make a living off of the farm. Teresa's estimated monthly budget was approximately \$950; however, that did not include the anticipated cost of health insurance.

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 trial court specifically considered the provisions of KRS 403.200(1) and ultimately awarded Teresa maintenance of \$250 per month, half the amount she requested. The court heard lengthy testimony from Teresa regarding her necessary living expenses. The court found Teresa's only assets were the marital property awarded to her and concluded those assets were insufficient to provide for her reasonable needs. Further, the court determined Teresa was unable to support herself through employment considering her age, education, and work history. Although David disagrees with the court's analysis,

our review indicates substantial evidence supported the court's decision. We conclude there was no error, palpable or otherwise.

Finally, David contends Teresa was not entitled to a permanent award of maintenance because she was only temporarily unemployed.

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).

KRS 403.200(2) instructs a trial court to consider several factors when determining the amount and duration of a maintenance award, including:

- (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently . . . ;
- (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.

The court's judgment clearly reflects it specifically considered the provisions of KRS 403.200(2) in awarding Teresa \$250 per month in maintenance despite her request for \$500 per month. The court heard detailed testimony regarding the parties' employment, necessary living expenses, and standard of living during the marriage. Teresa testified she needed maintenance because she would have no other income after her unemployment benefits ended. The court found Teresa's testimony persuasive, concluding she lacked sufficient property and employment to support her reasonable needs in accordance with the standard of living she enjoyed during the 27-year marriage. We conclude the court did not abuse its discretion by awarding Teresa monthly maintenance of \$250.00.

For the reasons stated herein, the judgment of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Reid Glass
Grayson, Kentucky

BRIEF FOR APPELLEE:

Robert W. Miller
Grayson, Kentucky