

RENDERED: OCTOBER 5, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001474-MR &
NO. 2016-CA-001562-MR

CASSANDRA JOANNE GREER

APPELLANT/CROSS-APPELLEE

v. APPEAL & CROSS-APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE STEPHEN M. JONES, JUDGE
ACTION NO. 11-CI-00742

GREGORY GARTH GREER

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

BEFORE: JONES, KRAMER, AND D. LAMBERT, JUDGES.

JONES, JUDGE: This appeal and cross-appeal challenge the Laurel Circuit Court's award of spousal maintenance to Appellant/Cross-Appellee Cassandra Joanne Greer. Following review of the record and applicable law, we affirm.

I. BACKGROUND

Cassandra Joanne Greer (“Wife”) and Gregory Garth Greer (“Husband”) were married in 1988 and separated in October of 2010. The highest level of education of both parties is a high school diploma. During the entirety of their marriage, Husband worked for his family’s road construction business and Wife was a homemaker and stay-at-home mother to the parties’ two children, whom are now adults. Husband’s income allowed the parties to enjoy a relatively luxurious lifestyle during their marriage. The parties’ joint federal tax returns demonstrate that between 2005 and 2011 Husband’s adjusted gross income ranged from a low of \$84,845 to a high of \$584,700.

Wife petitioned the court for dissolution of marriage in July of 2011. In March of 2012, Wife filed a motion for spousal maintenance. The affidavit attached to that motion calculated Wife’s reasonable and necessary living expenses at \$7,690.83 per month. The trial court held a hearing on Wife’s motion in April of 2012, during which Husband and Wife testified about their respective incomes and living expenses. Following that hearing, the trial court entered an order finding that Wife lacked sufficient employment to maintain the lifestyle she enjoyed during the parties’ marriage and ordering Husband to pay Wife \$4,000 a month in temporary maintenance.

In June of 2013, the parties underwent mediation and reached a final property settlement agreement. Pursuant to that agreement, the parties agreed that Wife would receive approximately \$718,629 from the parties' marital estate, which amounted to roughly 51% of the parties' marital estate. Of that amount, approximately \$300,000 was held in retirement accounts and approximately \$115,000 was readily accessible funds. Wife received the marital residence, which was valued at \$265,000 and unencumbered by a mortgage. The separation agreement was incorporated into the trial court's order dissolving the parties' marriage, entered on August 18, 2015. The dissolution decree reserved the issue of whether Wife was entitled to prospective maintenance. In the pendency of the final hearing on maintenance, the parties engaged in discovery and Wife requested multiple continuances. Wife's temporary maintenance was suspended in April of 2016.

The trial court conducted a hearing on prospective spousal maintenance on August 9, 2016. Prior to that hearing, both parties submitted memoranda to the trial court stating their positions as to what maintenance, if any, Wife was entitled to receive. Husband argued that Wife was not entitled to any prospective maintenance, as she had taken no steps to improve her earning capacity and the property settlement she had received was sufficient for her to maintain herself. In her argument in support of receiving spousal maintenance, Wife noted

that she had monthly living expenses of \$9,149, but her current salary was only \$1,655 per month. Wife stated that she had looked into advancing her education to enable her to obtain a higher-paying job; however, she could not afford to do so on her current salary. Wife argued that her lack of experience, training, and education made it unlikely for her to improve her employment. Further, Wife contended that she had fragile emotional health, which would make it difficult for her to work in a high-stress position. Wife requested that the trial court award her \$7,494 per month in maintenance, to continue until she reached the retirement age of 67, at which time she contended she should receive \$3,747 per month for the remainder of her life.

The trial court entered an order on spousal maintenance on September 2, 2016. In determining the appropriate amount of maintenance to which Wife was entitled, the trial court considered the factors listed in KRS¹ 403.200(2). The trial court found that many of the monthly expenses Wife claimed she incurred were representative of the lifestyle Wife enjoyed during the parties' marriage; however, it concluded that those expenses were not for Wife's "reasonable needs," but rather were arbitrary, discretionary, and luxurious expenditures. Specifically, those expenses included: \$340 per month for a maid service; \$500 per month for vacations; \$416 per month for gifts; \$166 per month for charitable contributions;

¹ Kentucky Revised Statutes.

\$250 per month for pedicures and massages; \$350 per month for hair and cosmetics; and \$100 per month for veterinarian and pet supplies. Further, the trial court found that some of the expenses listed by Wife, while for her reasonable needs, were inflated or excessive. For example, Wife claimed a clothing budget of \$6,000 per year and a food budget of \$1,320 per month.

The trial court noted that Wife received in excess of \$700,000 in the property settlement and that she was currently employed in a position where she made more than the current federal minimum wage. Additionally, the trial court found that Wife was in good health and capable of working, but had not pursued any other, higher paying job opportunities. While Wife had testified that she suffered from intermittent hip and back problems, as well as depression and anxiety, Wife had not supported that testimony with any medical evidence. Wife had consulted with a vocational expert at the advice of her attorney, but the deposition of the vocational expert showed that Wife was unwilling to look for employment outside of the London, Kentucky, area. In looking to Husband's ability to make maintenance payments to Wife, the trial court noted that Husband was currently unemployed, the family business having been sold in 2015. The trial court found that Husband was currently living on savings and passive earnings. In light of the above findings, the trial court concluded that Wife's employment income in combination with the marital property apportioned to her during the

settlement was sufficient to allow her to meet her financial needs without support from Husband.

In determining the duration of prospective maintenance, the trial court noted that five years had lapsed since the time the petition for dissolution had been filed. The trial court stated that had the maintenance issue been resolved at the time of the parties' separation, it would have found that \$4,000 per month for a period of five years was sufficient time to allow Wife to acquire sufficient education or training to obtain higher-paying employment. However, the trial court found that Wife had decided to take no steps to better her employment prospects since the award of temporary maintenance was entered.

The trial court awarded Wife maintenance in a lump sum amount of \$240,000, to be paid at \$4,000 per month for sixty months, beginning April 5, 2012. Husband was given credit for all amounts previously paid. As Husband had already paid Wife \$192,000 under the temporary maintenance order, this left a balance of \$48,000 to be paid over the next year.

This appeal and cross-appeal followed.

II. STANDARD OF REVIEW

“The determination of questions regarding maintenance is a matter which has traditionally been delegated to the sound and broad discretion of the trial court, and an appellate court will not disturb the trial court absent an abuse of

discretion.” *Barbarine v. Barbarine*, 925 S.W.2d 831, 832 (Ky. App. 1996) (citations omitted). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

III. ANALYSIS

On appeal, Wife contends that the trial court’s award of maintenance was unsupported by the evidence and based on erroneous findings of fact. Wife contends that she lacks sufficient income and property to meet her reasonable needs unless she continues to receive maintenance until she reaches retirement age. For his cross-appeal, Husband contends that the trial court erred in awarding Wife any prospective maintenance.

A trial court may grant a maintenance order for a spouse if it finds that the spouse seeking maintenance “lacks sufficient property, including marital property apportioned to [her], to provide for [her] reasonable needs; and . . . is unable to support [herself] through appropriate employment” KRS 403.200(1). In determining the amount and duration of maintenance to be awarded, trial courts are instructed to consider the following factors:

- (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.

KRS. 403.200(2).

KRS 403.200 “encourages rehabilitative maintenance to enable a spouse long absent from the workplace to acquire self-supporting skills.” *Clark v. Clark*, 782 S.W.2d 56, 61 (Ky. App. 1990) (citing LOUISE E. GRAHAM & JAMES E. KELLER, KENTUCKY DOMESTIC RELATIONS LAW 343 (Banks-Baldwin Law Publishing Co., 1988)). However, Kentucky courts “have ruled differently in situations where the marriage was long term, the dependent spouse is near retirement age, the discrepancy in incomes is great, or the prospects for self-sufficiency appears [sic] dismal.” *Id.* (citing GRAHAM & KELLER, *supra* at 344).

This Court has not been provided with a recording or transcript of the August 9, 2016 maintenance hearing.² The appellant bears the burden of ensuring that this Court receives a complete record. *Gambrel v. Gambrel*, 501 S.W.3d 900, 902 (Ky. App. 2016) (citing *Steel Techs., Inc. v. Congleton*, 234 S.W.3d 920, 926 (Ky. 2007), *abrogated by Osborne v. Keeney*, 399 S.W.3d 1 (Ky. 2012)). “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.” *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985). “Accordingly, our resolution of this appeal is based upon the record provided to us, and we assume the missing portions of the record support the trial court’s decision.” *Smith v. Smith*, 450 S.W.3d 729, 732 (Ky. App. 2014).

It is true that the trial court should not evaluate the parties’ standard of living objectively based on a reasonable person standard. Instead, the trial court should consider the standard of living maintained by the parties during their marriage. This standard makes sense if the income and assets of the party from whom maintenance is requested remains relatively consistent with that earned during the marriage. If Husband had been earning the same amount of money he

² The appellate record demonstrates that this Court did receive a copy of Wife’s designation of record on appeal, in which she designates the August 9, 2016 hearing as part of the record; however, that document is not filed in the trial court record with which we have been provided. Nonetheless, the Laurel Circuit Court Clerk did certify the record on appeal and indicated that the record included two CD/DVD recordings. Unfortunately, neither of those recordings are of the August 9, 2016 hearing.

earned during the parties' marriage, perhaps Wife would have been entitled to additional maintenance. However, in this case, the trial court specifically found that Husband's circumstances had changed such that he is now unemployed and is living on savings and passive earnings from non-marital and marital assets awarded to him from the settlement. In this respect, his situation is similar to Wife's situation. Given the change in Husband's situation, it is unrealistic to expect that the parties, even if still married, could sustain the type of lifestyle they were accustomed to during more lucrative times.

In light of the change in circumstances, it was appropriate for the trial court to consider and evaluate Wife's expenses. In doing so, the trial court appropriately determined that some were unreasonable or excessive. Nevertheless, the trial court did determine that Wife was entitled to some additional maintenance. We do not believe that the trial court abused its discretion in determining the amount of additional maintenance due Wife. Considering all the relevant factors, the trial court ordered an appropriate amount of maintenance.

IV. CONCLUSION

For the reasons set forth above, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-
APPELLEE:

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Winchester, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT:

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