

RENDERED: JANUARY 4, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001646-MR

KELLY NOBLE, JR.

APPELLANT

v. APPEAL FROM BREATHITT CIRCUIT COURT  
HONORABLE JANIE M. WELLS, JUDGE  
ACTION NO. 10-CI-00118

ALMA NOBLE AND  
HON. MONICA LACY

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

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

MAZE, JUDGE: Kelly Noble appeals the Breathitt Circuit Court's order awarding attorney's fees. We hold the trial court acted within its discretion in awarding attorney's fees and affirm.

Kelly and Alma Noble's thirty-eight-year marriage ended on October 11, 2013, when the trial court entered an order dissolving their marriage. The order

also resolved all issues related to the parties' marital and non-marital property. On appeal, this Court reversed in part and remanded due to the trial court's classification of certain property as marital. *Noble v. Noble*, 2013-CA-002027-MR, 2015 WL 510702, at \*4 (Ky. App. Feb. 6, 2015). On remand, the trial court entered a new order dividing the parties' property. The trial court also ordered Kelly to pay \$5,000 in attorney's fees. Kelly appealed both orders. On the second appeal, this Court affirmed most aspects of the trial court's orders, but the award of attorney's fees was reversed and remanded because the trial court failed to consider the financial circumstances of the parties. *Noble v. Noble*, 2015-CA-000792-MR, 2017 WL 729783, at \*3 (Ky. App. Feb. 24, 2017).

On remand, Kelly testified that he had been found to be disabled and received \$2,100.00 per month in social security benefits. Kelly alleged his monthly expenses totaled \$835.00. Alma testified that she worked forty hours per week at a community care center, earning \$1,508.00 per month. She also worked at a retail store during seasonal times, earning an additional \$86.40 per week. Alma testified that Kelly earned income from raising hay and cattle on the parties' marital property. Following the hearing, the trial court ordered Kelly to pay \$5,000 towards Alma's attorney's fees. This appeal follows.

In a divorce action, the trial court may order a party to pay a reasonable amount of the other party's attorney's fees after considering the

financial resources of the parties. KRS<sup>1</sup> 403.220. The Kentucky Supreme Court recently overruled prior case law requiring that there be a disparity in the financial resources of the parties in favor of the payor. *Smith v. McGill*, 556 S.W.3d 552, 556 (Ky. 2018). “While financial disparity is no longer a threshold requirement which must be met in order for a trial court to award attorney’s fees, we note that the financial disparity is still a viable factor for trial courts to consider in following the statute and looking at the parties’ total financial picture.” *Id.* Other factors the trial court should consider are:

- (a) Amount and character of services rendered.
- (b) Labor, time, and trouble involved.
- (c) Nature and importance of the litigation or business in which the services were rendered.
- (d) Responsibility imposed.
- (e) The amount of money or the value of property affected by the controversy, or involved in the employment.
- (f) Skill and experience called for in the performance of the services.
- (g) The professional character and standing of the attorneys.
- (h) The results secured.

*Rumpel v. Rumpel*, 438 S.W.3d 354, 363 (Ky. 2014) (quoting *Sexton v. Sexton*, 125 S.W.3d 258, 272-73 (Ky. 2004)). The amount of an award of attorney’s fees is committed to the trial court’s sound discretion. *Smith*, 556 S.W.3d at 556.

Even if Alma worked retail year-round, which she did not, there was still a discrepancy in the parties’ monthly income. Alma’s monthly expenses were higher. Kelly also had the ability to earn income by raising hay and cattle. This

---

<sup>1</sup> Kentucky Revised Statutes.

case has been before the trial court three times and subject to two prior appeals. Under the circumstances, the trial court's award of attorney's fees was clearly within its discretion.

Accordingly, the order of the Breathitt Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Melissa C. Howard  
Tammy E. Howard  
Jackson, Kentucky

BRIEF FOR APPELLEE:

Monica S. Lacy  
Stanton, Kentucky