

RENDERED: APRIL 17, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2019-CA-000346-MR

SHARON K. THOMAS (FORMALLY SHARON  
K. PATE)

APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE JOHN M. MCCARTY, JUDGE  
ACTION NO. 17-CI-00690

DOYLE R. PATE, JR.

APPELLEE

OPINION  
AFFIRMING IN PART,  
REVERSING IN PART, AND REMANDING

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BEFORE: CLAYTON, CHIEF JUDGE; K. THOMPSON AND L. THOMPSON,  
JUDGES.

CLAYTON, CHIEF JUDGE: Sharon K. Thomas (“Sharon”) appeals from the  
Davieess Circuit Court’s amended findings of fact, conclusions of law, and decree  
of dissolution of marriage (the “Amended Decree”), arguing that the trial court

miscalculated the correct amount of marital equity in certain vehicles owned by the parties, that the trial court wrongfully denied maintenance payments to Sharon, and that the trial court wrongfully denied the payment of Sharon’s attorney’s fees.

Upon review of the record and applicable law, we affirm the trial court’s division of property as it relates to the vehicles acquired by the parties during the marriage, and reverse and remand for proceedings consistent with this opinion on the issues of maintenance and attorney’s fees.

### **BACKGROUND**

Sharon and Doyle R. Pate, Jr. (“Doyle”) were married in October of 1992 and separated in July of 2017, with Doyle filing a verified petition for dissolution of marriage on July 14, 2017. After a hearing, the trial court entered findings of fact, conclusions of law, and a decree of dissolution of marriage on October 1, 2018 (the “Original Decree”).

#### **1. The Original Decree**

##### **a. The Marital Residence**

In the Original Decree, the trial court assigned the marital residence a value of \$148,000.00, and no mortgage or other indebtedness on such marital residence was noted by the trial court. The trial court further found that Sharon had a \$25,000.00 non-marital interest in the residence’s value, and therefore calculated the marital interest in the value of the residence by subtracting

\$25,000.00 from \$148,000.00, resulting in \$123,000.00 of divisible marital equity in the residence. While the trial court awarded the marital residence to Sharon, it ordered her to pay to Doyle half of the \$123,000.00 marital value in the residence, or \$61,500.00.

**b. The Parties' Vehicles**

In the Original Decree, the trial court also discussed a number of vehicles that were marital property subject to division. Specifically, the trial court found that the parties owned a 2015 Jeep Rubicon with a value of \$34,510.00 and an outstanding debt of \$13,312.64 (the "2015 Jeep"), a lawnmower with a value of \$5,000.00 and no debt (the "Mower"), and a tractor with a value of \$5,000.00 and no debt (the "Tractor"). The trial court awarded the 2015 Jeep to Sharon and assigned Doyle the remaining debt on the 2015 Jeep. Further, the trial court ordered that Sharon pay half of the equity in the 2015 Jeep to Doyle for his marital interest in the 2015 Jeep. Additionally, the trial court awarded the Mower and the Tractor to Sharon and ordered that, if Sharon wished to retain those vehicles, she would pay \$5,000.00 to Doyle for his interest therein.

The remainder of the vehicles – with a value of \$113,500.00 – were awarded to Doyle, and the trial court assigned to Doyle all of the remaining indebtedness on those – a total of \$94,084.53. Additionally, the trial court ordered that Doyle pay to Sharon half of the \$19,415.47 of marital equity in the vehicles

awarded to Doyle in the Original Decree, or \$9,707.74, for Sharon's marital interest in such vehicles.

**c. Maintenance**

As to the issue of maintenance, the trial court made findings that, at the time of the Original Decree, Doyle was 62 years old and was working at Tulsa Inspection Company, Inc. earning between \$11,666.67 and \$16,666.67 gross income per month. Sharon was also 62 years old and unemployed. Her only income consisted of Social Security disability payments in the amount of \$1,126.00 per month and a General Electric pension in the net amount of \$139.83 per month.

In terms of the maintenance requested by Sharon, the trial court found that Sharon had sufficient income, including property set aside for her, to meet her reasonable needs. Further, the trial court found that, for much of the parties' 26-year marriage – approximately 17 years, or until March of 2009 – Doyle was either in jail awaiting trial or serving out a sentence in federal prison and, thus, “there was never any standard of living established as a married couple.” Therefore, the trial court found that maintenance was not warranted in this case. Finally, the trial court ordered that each party would be responsible for his or her own attorney's fees and costs.

## **2. The Amended Decree**

Thereafter, both Doyle and Sharon filed motions to alter, amend, or vacate and the trial court held a hearing. Doyle argued, in part, that the trial court erred in calculating the equity that was due to Doyle for the 2015 Jeep because Sharon received the 2015 Jeep debt-free, as the trial court assigned Doyle all the remaining indebtedness. Sharon argued that the trial court erred by not awarding her maintenance or attorney's fees.

In its Amended Order, the trial court found that Sharon owed Doyle half of the full value of the 2015 Jeep rather than half of the equity in the 2015 Jeep. Moreover, the trial court found that Sharon's motion to alter, amend, or vacate was filed nineteen days after the Original Decree and therefore denied the motion as untimely, declining to address Sharon's arguments concerning maintenance and attorney's fees. Sharon subsequently filed a timely appeal of the trial court's Amended Order.

Other facts will be discussed as they relate to the particular arguments raised in this appeal.

### **ISSUES**

On appeal, Sharon argues that the trial court erred (1) in its mathematical computations dividing the parties' equity interests in the vehicles, (2) in failing to award Sharon maintenance, primarily regarding the trial court's

statement that cohabitation was a prerequisite to establish a marital standard of living, and (3) in failing to require Doyle to pay Sharon's attorney's fees.

### ANALYSIS

a. **Was the Trial Court's Division of the Marital Equity in the Vehicles Appropriate?**

Sharon's sole argument on appeal regarding the trial court's division of the marital property is that the trial court committed mathematical errors in its determination of the marital equity in the vehicles. Because this was an "action[] tried upon the facts without a jury[,]” on appeal, we review the trial court's findings of fact to determine if they are clearly erroneous. Kentucky Rule of Civil Procedure (CR) 52.01. "A factual finding is not clearly erroneous if it is supported by substantial evidence." *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. App. 2003) (citations omitted). Moreover, "[s]ubstantial evidence is evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person." *Id.* (citations omitted).

The trial court is given wide latitude in equitably dividing marital property and debt, and therefore "[w]e review a trial court's determinations of value and division of marital assets for abuse of discretion." *Young v. Young*, 314 S.W.3d 306, 308 (Ky. App. 2010) (citations omitted). Abuse of discretion concerns "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) (citations omitted).

Turning to the applicable statute concerning the division of marital property, Kentucky Revised Statute (KRS) 403.190(1) directs the trial court to divide the marital property in “just proportions.” The statute does not require an equal division of property. *Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky. App. 2007) (citations omitted). However, the statute does set out several relevant factors to consider in dividing marital property, 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.

KRS 403.190(1).

In this case, Sharon argues that the trial court should not have separated its discussion of the value and debt of the vehicles awarded to Sharon versus the value and debt of the vehicles awarded to Doyle. In other words, she argues that the trial court should have added the total amount of debt on all the

vehicles owned by the parties at the time of the Original Decree, rather than just the amount of debt relating to the vehicles the trial court awarded to Doyle and subtracted that amount from the total value of all the vehicles owned by the parties at the time of the Original Decree to determine the overall amount of marital equity in the vehicles.

In essence, it appears that the trial court separately analyzed and calculated the equity in the vehicles that it awarded to Sharon and the vehicles that it awarded to Doyle to account for the fact that Doyle was assuming the entire debt on the 2015 Jeep. Consequently, while Sharon might disagree with the mathematical equations utilized by the trial court in determining the amounts due to each party as related to the vehicles, we can discern no abuse of discretion or clear error committed by the trial court. We therefore affirm the trial court as to this issue.

**b. Was the Trial Court's Denial of Maintenance Appropriate?**

Sharon next argues on appeal that the trial court erred when it failed to order Doyle to pay Sharon maintenance. An award of maintenance is governed by KRS 403.200, which states, in part, that:

(1) . . . 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[.]

After the foregoing initial determination has been made, various factors are to be considered by the trial court in setting the amount and duration of maintenance, such as: the financial resources of the party seeking maintenance and his ability to meet his needs independently; the time necessary to become sufficiently educated or trained to find appropriate employment; the standard of living established during the marriage; the duration of the marriage; the age and the physical and emotional condition of the spouse seeking maintenance; and 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)(a)-(f).

In *Perrine v. Christine*, 833 S.W.2d 825, 826 (Ky. 1992), the Kentucky Supreme Court stated “[u]nder this statute, the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts.” To reverse the trial court, “a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion.” *Id.*

Moreover, a panel of this Court has found that, to the extent that a trial court fails to make findings of fact as to “the income producing value of property

awarded to [a spouse] in the division of the marital assets,” the issue must be remanded for the trial court to “consider the specific statutory language contained in KRS 403.200, and to issue specific findings of fact in determining whether an award of maintenance . . . is justified under the statute.” *Wood v. Wood*, 720 S.W.2d 934, 935-96 (Ky. App. 1986).

Here, the trial court stated the following in the Original Decree regarding its denial of an award of maintenance in favor of Sharon:

The Court finds that [Sharon] has sufficient income, including property set aside for her, to meet her reasonable needs. Furthermore, during the marriage of 26 years, [Doyle] and [Sharon] were married while he was in jail awaiting trial and after sentencing, spent the majority of the time in Federal custody and the parties lived together for only a limited period of time. Thus, there was never any standard of living established as a married couple. Therefore, the Court concludes that maintenance is not warranted in this case.

Our concern with the foregoing language is that the trial court’s findings of fact were insufficient under KRS 403.200 to enable us to review whether Sharon will be able to meet her reasonable needs, which, as previously discussed, is a threshold determination under the statute. Particularly, CR 52.01 requires a trial court to “find the facts specifically and state separately its conclusions of law thereon[.]” Moreover, as discussed by the Kentucky Supreme Court in *Anderson v. Johnson* involving a trial court’s relocation decision:

The trial court decided only that the move would not be in the child's best interest, *which is the conclusion of law required by KRS 403.320. The order includes no findings of fact to support this conclusion, which violates the command of CR 52.01. . . .* Saying only that it is not in a child's best interest to move . . . and nothing further, raises the question "Why?"

350 S.W.3d 453, 458-59 (Ky. 2011) (emphasis added). In this case, while the trial court made the blanket statement that Sharon had sufficient income, including property set aside to her, to meet her reasonable needs, the trial court provided no relevant facts to underpin this statement. Because the trial court has not met the requirements of CR 52.01, we are unable to determine whether the requirements of KRS 403.200(1)(a) have been met.

Moreover, while we question the trial court's conclusion that no standard of living was established as a married couple, we view this issue to be more applicable in determining the amount and duration of maintenance, as opposed to an overall determination as to whether maintenance is appropriate in this situation. *See* KRS 403.200(2)(c).

Thus, we reverse the trial court's determination of maintenance in this case and remand this matter to the trial court for it to make specific and relevant findings of fact under KRS 403.200(1), particularly in light of the following: the trial court's own findings of fact that Sharon was in her 60s and receiving minimal monthly income, the bulk of which was Social Security disability benefits; the fact

that Sharon was allocated non-income producing property by the trial court; and the fact that Sharon would most likely be required to sell the marital residence to pay the large sum to Doyle ordered by the trial court. After the trial court makes the applicable findings of fact, the trial court should exercise its discretion and determine whether and to what extent maintenance is or is not necessary.

**c. Did the Trial Court Err in Failing to Order Doyle to Pay Sharon's Attorney's Fees?**

Sharon's final argument is that the trial court erred in failing to require Doyle to pay all or a portion of Sharon's attorney's fees. KRS 403.220 states, in relevant part, as follows:

*The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees[.]*

(Emphasis added.)

Because we are remanding the issue of maintenance to the trial court, the financial resources of the parties in this case may be altered. We therefore reverse the trial court's denial of attorney's fees and remand this issue to the trial court to consider any applicable changes to the parties' financial resources upon remand of the issue of maintenance, as discussed in the previous section.

**CONCLUSION**

For the foregoing reasons, we affirm in part, reverse in part, and remand to the trial court for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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