

NO. 94-CA-1993-MR

LIDIJA JUGO

APPELLANT

V. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAN CORNETTE, JUDGE
ACTION NO. 93-CI-393

SLOBODAN JUGO

APPELLEE

OPINION

AFFIRMING IN PART, REVERSING IN PART

AND REMANDING

* * * * *

BEFORE: DYCHE, JOHNSON, and JOHNSTONE, Judges.

DYCHE, JUDGE. Lidija and Slobodan Jugo were divorced after nineteen years of marriage. Custody of the parties' two children was awarded to Lidija. Lidija appeals as inadequate the trial court's award to her of child support in the amount of \$1,500.00 per month per child; the award to her of maintenance in the amount of \$3,500.00 per month for the first three years and \$2,500.00 per month for the three years following; and the trial court's

imposition of a rate of seven percent (7%) interest on a deferred property division obligation.

Lidija sought a child support award of \$3,000.00 per month per child and was awarded \$1,500.00 per month per child. Lidija argues the trial court did not consider the standard of living enjoyed by the children in fixing child support and that an amount approximating 5.3% of Slobodan's average gross monthly income of \$38,800.00 is insufficient and constitutes an abuse of discretion.

Slobodan counters that the standard of living enjoyed by the children has not declined and that there is ample evidence in the record to support that. He notes that, in addition to the support amount, he was ordered to pay the tuition of the children at private schools, their books, their medical and dental expenses, insurance premiums, and optical expenses. Slobodan contends the amount of court-ordered support and other payments required of him for the children make up 12% of his 1993 gross income, which is approximately the percentage of gross income required by the last figure shown in the child support guidelines.

The child support guidelines at KRS 403.212 do not set any presumption of child support for combined gross income in excess of \$15,000.00 per month. In circumstances where the combined adjusted parental gross income exceeds the uppermost levels of the guideline tables, as in the case sub judice, the trial court may use its discretion in determining child support. See KRS 403.212(5). KRS 403.211(4) provides that a trial court

retain its broad discretion in determining the amount of child support in each family's circumstances. Redmon v. Redmon, Ky. App., 823 S.W.2d 463 (1992). Having reviewed the record, we find no abuse of the trial court's discretion with respect to the amount of child support awarded. The trial judge carefully considered both the needs of the children and the ability of appellee to pay.

Lidija also insists that the amount and duration of the maintenance award is inadequate. The trial court ordered Slobodan to pay \$3,500.00 per month in maintenance for the first three years and \$2,500.00 per month for the three years following. Lidija requested \$4,000.00 per month until she graduates from college and \$3,000.00 per month thereafter for ten years.

KRS 403.200(2) requires the trial court to consider, among other factors, the standard of living established during the marriage in setting maintenance; the ability of the spouse from whom maintenance is sought to meet his/her needs while meeting those of the spouse seeking maintenance; and the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment. The trial court considered all relevant factors set forth in KRS 403.200. It is incumbent upon Lidija to convince us that the trial court abused its discretion in the award. Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977). Lidija has failed to meet this burden. Again we find no abuse of discretion.

We lastly consider Lidija's contention that the trial court erred in failing to impose the legal rate of 12% annual

interest on a deferred property division obligation of Slobodan to Lidija. The trial court set a 7% rate of interest on the deferred payment obligation. We agree that this was erroneous. KRS 360.040 provides that the legal rate of annual interest on a judgment in Kentucky is 12%. Our highest court has held that trial courts exceed the scope of KRS 360.040 in a dissolution proceeding when they impose less than that statute's rate of interest on deferred payments. Cochran v. Cochran, Ky. App., 746 S.W.2d 568, 570 (1988), citing Ridge v. Ridge, Ky., 572 S.W.2d 859, 861 (1978). We therefore reverse that portion of the trial court's judgment and award appellant interest on the deferred payments of 12% annually.

The judgment of the Muhlenburg Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

JOHNSTONE, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN PART, DISSENTS IN PART AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING IN PART. I concur with the reversal of the trial court on the interest issue, but respectfully dissent on the child support and maintenance issues. The trial court has abused its discretion in setting the child support by failing to consider the standard of living enjoyed by the two minor children. Stewart v. Madera, Ky. App., 744 S.W.2d 437 (1988). Instead, the trial court imposed its own values regarding the children's standard of living. In its findings of fact the trial court stated:

This trial judge just has to believe that there is a difference in support and surfeit regardless of the income of the parents. This trial judge does not believe it is conducive to the well-being of children to shower money and goodies upon them. This is the way to ruin children not raise them. The court believes that anything above \$1,500.00 per child per month might very well tend to ruin the child and the court does not want to do that.

In determining that \$1,500.00 per month per child was the maximum amount of child support that was appropriate, the trial court evaluated the various expenses related to the children and found that certain expenses claimed by Lidija on behalf of the children were not reasonable. Among the expenses found to be unreasonable were \$250.00 per month per child for clothing and \$120.00 per month for Bogdan's guitar lessons. This finding is an abuse of discretion in that it totally disregards the standard of living the children enjoyed.

The trial court abused its discretion in awarding maintenance to Lidija, by failing to properly consider the difference in the husband's and wife's earnings and earnings potential, by unfairly criticizing Lidija's expenses and not questioning Slobodan's expenses, by considering an expected decrease in Slobodan's income that is not supported by the record, and by failing to properly consider Lidija's standard of living. Roberts v. Roberts, Ky.App., 744 S.W.2d 433, 436 (1988); KRS 403.200(2).

BRIEF FOR APPELLANT

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