

RENDERED: DECEMBER 15, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2016-CA-000255-MR

BARBARA ANN HEIL

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT  
HONORABLE LINDA R. BRAMLAGE, JUDGE  
ACTION NO. 10-CI-03969

KENNETH STANLEY HEIL

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, J. LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: The sole issue presented in this marital dissolution case is whether the Kenton Family Court abused its discretion in denying maintenance to Barbara Ann Heil after finding that she was awarded sufficient property in the dissolution of marriage proceeding to provide for her reasonable needs. We conclude the family court did not abuse its discretion and affirm.

Barbara and Kenneth Stanley Heil were married on February 26, 1982, and separated in April 2009. Together, they have two emancipated children. During the marriage, the parties accumulated a sizeable estate through their ownership interest in Barleycorn's restaurants and bars.

On July 5, 2012, a decree of dissolution was entered reserving all issues of property division, debt distribution, spousal maintenance and attorney fees and costs. Subsequently, the parties filed two sets of stipulations and ultimately reached a property settlement agreement on January 27, 2016.

Pursuant to the property settlement agreement, Barbara received total cash payments of \$1,019,481.40. In that agreement, Kenneth waived any right to \$152,000 advanced to Barbara from the marital estate. She received \$550,481 representing all proceeds from the sale of the parties' marital residence and household furnishings and an additional cash payment of \$300,000. She also began receiving \$4,000 per month beginning February 1, 2016 and ending in January 2019 as a division of property equity. At the end of that third year of payments, Barbara will receive a final cash payment of \$25,000. Barbara was also granted lifetime food privileges at Barleycorn's of \$1,000 per month. In addition to other property, each party was awarded their individual residences purchased after their separation. Because the parties resolved the marital property issues, the

only issue remaining to be determined by the trial court was Barbara's request for permanent maintenance.

A hearing was conducted on January 27, 2016. At that time, Barbara was 65 years old and Kenneth was 70 years old.

In addition to considering the property settlement agreement and stipulations filed by the parties, the family court heard testimony regarding the parties' respective incomes. After the parties' separation, Barbara received her master's degree that was paid for by Kenneth. She is an adjunct professor at Northern Kentucky University teaching two classes and earning \$550 per month. She also receives \$1,000 per month in social security benefits. When Barbara turns seventy, she will receive \$120 per month from a pension earned during the marriage. Barbara testified that her anticipated monthly expenses are \$9,180.84. Her mortgage payment is \$1,309 per month.

Kenneth no longer works at Barleycorn's but does consulting for the business. Although in 2007, 2008 and 2009, he received distributions from Barleycorn's ranging from \$395,000 to \$550,000, his current total gross yearly income is \$110,785.

The family court heard extensive testimony concerning Barbara's current health issues. One of her physicians, Dr. Christopher Lee Coleglazier, testified by deposition that Barbara has multiple diagnoses including fibromyalgia,

fatigue, insomnia, osteoarthritis, and lumbar disc disease. She also suffers from depression. Barbara has been prescribed various medications. Dr. Coleglazier had not restricted Barbara's activities but opined her ability to work is limited.

Kentucky Revised Statutes (KRS) 403.200 provides in part:

- (1) In a proceeding for dissolution of marriage ... 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[.]

Both subsections of the above statute must be complied with before an award of maintenance can be granted. *Inman v. Inman*, 578 S.W.2d 266, 270 (Ky.App. 1979).

The denial or the award of maintenance is within the sound discretion of the trial court. *Perrine v. Christine*, 833 S.W.2d 825, 826 (Ky. 1992). The test for abuse of discretion is whether the decision of the family court was "arbitrary unreasonable, unfair, or unsupported by sound legal principles." *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky.App. 2001).

Barbara received over one million dollars in cash assets alone. While she is not required to invest this amount in uninsured and speculative markets, it is reasonable to expect that she will use this large amount of cash in a way to help

provide for her reasonable needs. *Atwood v. Atwood*, 643 S.W.2d 263, 265–66 (Ky.App. 1982). Additionally, Barbara is not without sources of income other than the large marital estate she received. With the financial support of Kenneth during the separation, she obtained her master’s degree and is currently teaching part-time at Northern Kentucky University. Additionally, she will receive social security and a small pension. While the parties enjoyed a high standard of living during the marriage, the family court did not abuse its discretion in finding that the property award, combined with Barbara’s ability to support herself through other means, will provide sufficient income to provide for her reasonable needs.

Because Barbara is not entitled to maintenance, there is no reason to address its amount and duration. The Kenton Circuit Court’s supplemental decree, findings of fact and conclusions of law is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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