

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001361-MR

MARIA ANNE AMRHEIN

APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE NORA J. SHEPHERD, JUDGE
ACTION NO. 15-CI-50194

WILLIAM ANTHONY AMRHEIN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, JOHNSON, AND J. LAMBERT, JUDGES.

LAMBERT, J., JUDGE: Maria Anne Amrhein (Maria) appeals from the Madison Circuit Court orders setting maintenance and resolving other issues concerning the dissolution of her marriage to William Anthony Amrhein (Bill). We affirm.

The Amrheins were married in 1983 and had three children, all of whom are now adults. Bill began his career with the United States Marines and

was stationed in Charleston, South Carolina. After Bill's separation from service, the family moved to Pittsburgh, Pennsylvania, where Bill enrolled in school. He eventually achieved a masters degree in civil engineering and a degree in business administration. He has been employed at Stantec Corporation in Lexington, Kentucky since 2012. During this time the couple resided in Richmond, Kentucky.

In the early years of the marriage Maria stayed home to raise the children but returned to work as a restaurant employee, then manager, then regional representative. She testified that she did this to support the family while Bill was pursuing his three degrees. After becoming injured on the job, Maria received workers' compensation until operating a day care center in the parties' home. Maria began taking college courses in 2006. Maria has not worked outside the home since she and Bill moved to Kentucky. She has been enrolled in the early childhood education program at Eastern Kentucky University (EKU) since they moved to Kentucky. Maria withdrew from school in January 2015, at that time having completed 107 hours and maintaining a grade point average of 3.64. Maria intends to complete her degree from EKU as soon as practicable.

The parties separated in March 2015, and Maria filed a petition for dissolution the following month. However, both parties continued to reside in the home until it was sold in March 2016, with Bill paying all the expenses associated with its maintenance.

During the dissolution process, the Amrheins engaged in two attempts at mediation and resolved very few of their issues. Temporary maintenance in the amount of \$1,200.00 per month was awarded to Maria by court order entered in November 2015. On April 14, 2016, the Madison Circuit Court held a lengthy hearing on the remaining issues, and entered its findings of facts, conclusions of law, and decree of dissolution on July 6, 2016. Maria took exception to the order, filing a motion for additional findings of fact and, in the alternative, to alter, amend, or vacate the original order. Kentucky Rules of Civil Procedure (CR) 52.02 and 59.05. The motion was denied on September 6, 2016, although the circuit court did amend one finding of fact to reflect that Bill had no other marriages. Maria timely filed her notice of appeal, asking this Court to revisit the issues of maintenance, attorney fees, and the division of marital property.

Maria's first argument concerns the amount and duration of maintenance. Thus, we begin by repeating the circuit court's ruling regarding maintenance, namely, "Considering the factors set forth in KRS 403.200 and the parties' statement of reasonable necessities, the Petitioner [Maria] is hereby awarded maintenance in the amount of \$2,500.00 per month for a period of three years commencing August 1, 2016." The maintenance arguments can best be described as this: Maria contends that the duration and amount are insufficient to meet her needs (she would like to receive at least \$2,500.00 per month until she reaches age 62, with additional monies awarded to her to compensate for the

income tax she must pay on the award), while Bill concedes that an award of maintenance is appropriate but contends that the duration and amount are excessive. He suggests that, at most, Maria should receive \$1,200.00 per month for 18 months.

CR 52.01 provides the general framework for the family court as well as review in the Court of Appeals: “In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment[.] . . . Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” *See Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnote omitted) (An appellate court may set aside a lower court’s findings made pursuant to CR 52.01 “only if those findings are clearly erroneous.”). The *Asente* Court went on to address substantial evidence:

“[S]ubstantial evidence” is “[e]vidence that a reasonable mind would accept as adequate to support a conclusion” and evidence that, when “taken alone or in the light of all the evidence, ... has sufficient probative value to induce conviction in the minds of reasonable men.” Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses” because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, “[m]ere doubt as to the correctness of [a] finding [will] not justify [its]

reversal,” and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Id. at 354 (footnotes omitted).

Kentucky Revised Statute (KRS) 403.200 enunciates the conditions and factors to be considered in establishing a maintenance award:

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, 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 or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(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.

“While the award of maintenance comes within the sound discretion of the trial court, a reviewing court will not uphold the award if it finds the trial court abused its discretion or based its decision on findings of fact that are clearly erroneous.”

Powell v. Powell, 107 S.W.3d 222, 224 (Ky. 2003) (citations omitted). *See also Brenzel v. Brenzel*, 244 S.W.3d 121, 126 (Ky. App. 2008) (“An award of maintenance and the amount are within the discretion of the trial court.”).

Once it decides that an award of maintenance is appropriate, the court must then consider all the relevant factors in KRS 403.200(2) to determine the appropriate amount and duration of maintenance. Like the decision to award maintenance, “the amount and duration of maintenance is within the sound discretion of the trial court.” *Weldon v. Weldon*, 957 S.W.2d 283, 285 (Ky. App. 1997). “The test for abuse of discretion is whether the trial judge’s decision was

arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004) (citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)); *Kentucky Nat. Park Com’n ex rel. Commonwealth v. Russell*, 301 Ky. 187, 191 S.W.2d 214, 217 (1945).

We have examined the record in its entirety, including the video recordings of the various hearings, and cannot agree with Maria that the Madison Circuit Court abused its discretion in the amount and duration of the maintenance awarded. Maria had requested the specific sum of \$2,500.00 per month, and testified that she intended to complete her degree in early childhood education to obtain employment commensurate with her education. The circuit court considered all the statutory factors as well as the testimony and documentary evidence presented by the parties. The amount and duration of maintenance awarded is sufficient for Maria to obtain her stated objective of completing her degree and obtaining employment in the field of early childhood education. The decision was based on substantial evidence, and there was no abuse of discretion. *Brenzel, supra; Sexton, supra.*

Maria next argues that the circuit court disregarded expert testimony that Maria was unable to work and “that school should be a first and only option initially.” Again, we cannot agree with Maria. Dr. Hartley’s testimony was summarized in the circuit court’s findings, and it was a factor which provided the basis for the award of maintenance. The circuit court’s award was specifically

tailored to allow Maria to complete her education as a full-time student. We find no error in this regard.

We next consider the issue of attorney fees, which is addressed in KRS 403.220:

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, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Maria insists that “the complete disparity in incomes of the parties and the debt now held completely by Maria” warrant an award of attorney fees. We disagree.

Under this statute, a trial court may “order one party to a divorce action to pay a ‘reasonable amount’ for the attorney’s fees of the other party, but only if there exists a disparity in the relative financial resources of the parties in favor of the payor.” “But even if a disparity exists, whether to make such an assignment and, if so, the amount to be assigned is within the discretion of the trial judge.” “There is nothing mandatory about it.” Thus, a trial court’s ruling on attorney fees is subject to review only for an abuse of discretion. “The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.”

Sexton, supra at 272 (footnoted citations omitted).

Maria's argument appears to focus on the period between separation and dissolution, when Maria was unable to manage her finances sufficiently to remain current with her attorney fees and other expenses despite an earlier lump sum division of \$14,000.00 from a joint account as well as temporary maintenance of \$1,200.00 per month while Bill continued to pay all household operating costs. During that time Maria opened several credit cards, and the debt incident thereto has been allocated to her by the circuit court. However, the circuit court also awarded Maria fifty percent of the parties' considerable assets, with which she should be able to satisfy her debts and subsidize her cost of living. "The record indicates that the trial court properly considered the factors in KRS 403.190." *Muir v. Muir*, 406 S.W.3d 31, 35 (Ky. App. 2013). We decline to disturb those findings.

The orders of the Madison Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Jerry W. Gilbert
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