

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

NO. 2019-CA-000322-MR

SAMMY AKERS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE MARCUS L. VANOVER, JUDGE  
ACTION NO. 17-CI-00757

PATTY AKERS

APPELLEE

OPINION  
AFFIRMING

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

BEFORE: COMBS, KRAMER, AND L. THOMPSON, JUDGES.

COMBS, JUDGE: This case involves a dissolution of marriage and post-dissolution issues that arose from it. Sammy Akers appeals the final judgment of the Pulaski Family Court entered on December 26, 2018, following entry of a limited decree that dissolved his marriage to Patty Akers. Sammy argues that the family court erred by failing to conclude that Patty dissipated marital assets. He

also contends that the family court erred in both the amount and the duration of maintenance awarded to Patty. After our review, we affirm.

Sammy and Patty married in St. Lucie, Florida, in 1984. They separated in July 2017, and Patty filed a petition for dissolution of the marriage. Patty was awarded temporary maintenance in the amount of \$1,500.00 per month. A final hearing was conducted in August 2018. The family court heard evidence concerning the division of certain marital property that had not been disposed of through mediation (including \$63,000.00 in cash) and Patty's claim for maintenance.

The family court concluded that \$63,000.00 in cash withdrawn by Patty from the parties' joint bank account was "wholly marital in nature." However, after hearing relevant testimony, it found that sufficient proof had not been presented to account for the location or disposition of the cash. The court divided the cash equally between the parties "in the event the money is located."

The family court found that Patty lacked sufficient property, including marital property apportioned to her, to provide for her reasonable needs and that she was unable to support herself through appropriate employment. The family court considered the following factors: the length of the parties' marriage; the disparity in their earning capacities; Patty's age and her state of health; Sammy's ability to meet his needs while meeting a maintenance obligation; and the standard

of living enjoyed by the parties during marriage. In light of its analysis of these factors, the family court determined that an award of permanent maintenance in the amount of \$1,500.00 per month was appropriate. Sammy was found to be in contempt for his failure to pay to Patty the temporary maintenance awarded, and he was ordered to pay \$1,000.00 toward her attorney's fees. This appeal followed.

Sammy first argues that the family court erred by failing to find that Patty had dissipated the marital estate by withdrawing \$63,000.00 from the parties' joint bank account before she filed the petition for dissolution. We disagree.

[A] party is free to dispose of [] marital assets as he sees fit so long as such disposition is not fraudulent or intended to impair the other spouse's interest such that it may properly be classified as a dissipation of the marital estate.

*Ensor v. Ensor*, 431 S.W.3d 462, 472 (Ky. App. 2013).

A family court can decide that a spouse dissipated marital assets if the disputed property is expended "(1) during a period when there is a separation or dissolution impending, and (2) where there is a clear showing of intent to deprive one's spouse of his or her proportionate share of the marital property." *Robinette v. Robinette*, 736 S.W.2d 351, 354 (Ky. App. 1987); *see also Brosick v. Brosick*, 974 S.W.2d 498 (Ky. App. 1998). Dissipation of the marital estate must be shown by a preponderance of the evidence, and the family court's findings of fact are upheld if supported by substantial evidence. *Kleet v. Kleet*, 264 S.W.3d 610, 617

(Ky. App. 2007). Finally, due regard must be accorded to the opportunity of the family court to judge the credibility of witnesses. CR<sup>1</sup> 52.01. If a dissipation of assets is found to have occurred, “the court will deem the wrongfully dissipated assets to have been received by the offending party prior to the distribution.”

*Brosick*, 974 S.W.2d at 500. “The equitable relief fashioned by the court must bear some relation to the evidence presented.” *Duffy v. Duffy*, 540 S.W.3d 821, 829 (Ky. App. 2018).

At the final hearing, Patty admitted that she had withdrawn \$63,000.00 from the parties’ joint bank account before she filed the petition for dissolution. She testified that she promptly deposited the funds into her individual bank account. On July 27, 2017, she withdrew \$60,000.00 from the account and put it in a safe in the basement of the marital residence. Patty indicated that Sammy left for a trip to Alabama on August 3, 2017, to go four-wheeling with friends.

Meanwhile, Patty had gone on a trip to Pigeon Forge, Tennessee, on August 4. She saw Sammy in Pigeon Forge that night leaving a theater with another woman. Patty returned from Tennessee at around 2:30 a.m. on August 5 to find the home security system sounding a break-in. She assumed that the dog had set off the alarm. Patty testified that upon waking the following morning, she discovered that the garage door was open and that the parties’ motor home and

---

<sup>1</sup> Kentucky Rules of Civil Procedure.

truck were gone. When she went inside, she found the doors of both the gun safe and the safe in which she had stowed the cash standing open. Guns and \$60,000.00 were missing. Patty testified that only she and Sammy knew the code to the safes. She called the Pulaski County Sheriff's Office and reported that the parties' home had been burglarized.

A patrol officer from the sheriff's office testified that he responded to the burglary call and met with Patty. He also interviewed Sammy, who admitted to the officer that he had gone into the house on August 3, and that he had removed various items. However, he denied taking the cash and the guns.

Patty introduced Sammy's bank statements into evidence. These records indicated that Sammy had made several cash deposits over the course of the parties' separation. These cash deposits totaled nearly \$54,000.00.

During his examination, Sammy admitted to the court that he had entered the home and removed some items. However, he categorically denied taking the guns and the \$60,000.00 in cash.

Again, the family court is charged with weighing the credibility of the witnesses. In light of the conflicting testimony, we conclude that the family court did not err by finding that it could not "say by a preponderance of the evidence which party ended up with the money." Under the circumstances, we cannot agree with Sammy's assertion that "[w]hether [the] marital property is stolen should be

of no consequence in determining whether it was dissipated from the marital estate.” In its judgment, the family court clearly was not convinced that the property had been stolen. Instead, the court suspected that one or the other of the parties retained the marital property. However, it could not determine which of them had deprived the other of a portion of the marital estate. Its remedy -- dividing the cash equally between the parties “in the event the money is located” -- was an equitable disposition somewhat reminiscent of Solomon. There was no error.

Sammy also argues that the family court erred in the amount and duration of its award of maintenance to Patty. He contends that the family court erred by failing to impute income to Patty and by failing to consider his ability to meet his own reasonable needs while meeting any maintenance obligation. We disagree.

We review a family court’s maintenance decision for an abuse of discretion. *See Young v. Young*, 314 S.W.3d 306, 308 (Ky. App. 2010); *McGregor v. McGregor*, 334 S.W.3d 113, 118 (Ky. App. 2011). To constitute an abuse of discretion, the family court’s decision must be seen as “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). The family court’s findings of fact will not be disturbed unless clearly erroneous. CR 52.01. “Findings of fact are not clearly

erroneous if supported by substantial evidence.” *Janakakis-Kostun v. Janakakis*, 6 S.W.3d 843, 852 (Ky. App. 1999). Substantial evidence is evidence which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable people. *Id.* The family court’s conclusions of law are reviewed *de novo*. *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky. App. 2009).

Sammy argues that the court should have imputed income to Patty before it settled on an amount and duration of the maintenance award. Patty is more than sixty-five years of age. She has numerous health concerns. Her highest level of education is a GED. But because she was denied Social Security disability benefits, Sammy contends that she is able-bodied and capable of gainful employment as a matter of law. He argues that there was substantial evidence introduced at the hearing to conclude that Patty has a decent business acumen and marketable administrative skills. He contends that the family court erred by failing to impute to her at least a minimum wage before it determined the amount and duration of maintenance. He also believes that the family court erred by failing to consider his ability to meet his own reasonable needs while meeting the maintenance obligation.

The family court properly considered the relevant factors listed in KRS<sup>2</sup> 403.200, and the amount and duration of its maintenance award were both supported by the evidence. The provisions of KRS 403.200(2) govern the amount and duration of spousal maintenance to be awarded by the family court. It provides that the following factors may be relevant in the family court's determination:

- (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently . . . ;
- (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.

The record reveals that the family court duly considered the appropriate statutory factors in determining its maintenance award. Sammy and Patty were married for 34 years. The court heard evidence concerning Patty's poor physical health and her inability to work outside the home, the standard of living established during the marriage, the parties' financial resources, and their claimed expenses. It found that Patty's income was \$298.00 per month, and it accepted her

---

<sup>2</sup> Kentucky Revised Statutes.

documented expenses -- including the costs of monthly prescriptions -- totaling \$600.00.

The court found that Sammy's income was more than \$4,100.00 per month. It discounted Sammy's claimed expenses and found specifically that he could continue to meet his own needs while supporting Patty. Considering the evidence and the factors set forth in KRS 403.200, the trial court awarded Patty permanent maintenance in the amount of \$1,500.00 per month. In light of the broad discretion afforded to a family court in its award of maintenance, we conclude that Sammy has failed to show that the amount and duration of the court's award were unjustified.

We AFFIRM the judgment of the Pulaski Family Court.

L. THOMPSON, JUDGE, CONCURS.

KRAMER, JUDGE, CONCURS IN PART AND DISSENTS IN PART AND DOES NOT FILE A SEPARATE OPINION.

BRIEF FOR APPELLANT:

John A. Combs  
London, Kentucky

BRIEF FOR APPELLEE:

Alison D. Hunley  
Somerset, Kentucky