

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000156-MR

E. CHANDLER DEAL, JR.

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE MARGARET R. HUDDLESTON, JUDGE
ACTION NO. 96-CI-00173

LISA B. EBERLIN

APPELLEE

OPINION
VACATING AND REMANDING

** ** *

BEFORE: EMBERTON, CHIEF JUDGE; JOHNSON AND SCHRODER, JUDGES.

JOHNSON, JUDGE: E. Chandler Deal, Jr., has appealed from the decree of dissolution of marriage entered by the Warren Circuit Court on January 4, 2001, which adopted the recommendations in the Special Domestic Relations Commissioner's report which included an award of maintenance to Deal's former wife, Lisa B. Eberlin. Having concluded that in making the maintenance award the trial court failed to make sufficient factual findings after

the parties filed separate bankruptcy petitions, we vacate and remand for further findings.

Deal and Eberlin were married on August 1, 1982, and their marriage of approximately 14 years produced one child. Deal and Eberlin separated on February 1, 1996, and Deal filed a petition for dissolution of marriage on February 15, 1996. Deal is employed as a medical doctor and lives in Bowling Green, Kentucky. Eberlin is employed as a medical doctor and lives in Los Angeles, California. Their daughter, who was approximately six years old at the time of the divorce, resides with Eberlin in Los Angeles.

A trial was held before the Special Domestic Relations Commissioner on February 6, 1997, February 7, 1997, March 15, 1997, April 24, 1997 and June 19, 1997. The Commissioner's trial report was filed on February 11, 1998. After considering the objections filed by both parties, the trial court adopted all of the Commissioner's report, except that it remanded the action to the Commissioner "only for the recalculation of debts that might exist."

The trial court awarded the parties joint custody of their child, with Eberlin being the residential custodian. Deal

was ordered to pay child support of \$1,125.00 per month, plus 25 percent of the child care expenses.¹

The parties' assets included various bank accounts, investment accounts, and pension plans with a total value of approximately \$125,000.00. Their marital residence sold for \$278,000.00, but it had a mortgage against it of approximately \$389,000.00. One of the mortgages covered debts related to the operation of the Vascular Center, a medical office established by Eberlin in 1995. The parties' debts, including the balances on the mortgages after the marital residence was sold and the debts related to the Vascular Center, totaled approximately \$182,000.00. When the trial court divided the marital assets and debts, Deal was awarded approximately \$43,854.00 in marital property and approximately \$60,792.00 in marital debts; Eberlin was awarded approximately \$80,454.00 in marital property and approximately \$120,773.00 in marital debt.

The trial court determined that Deal earned a gross income of \$21,000.00 per month, and Eberlin earned a gross income of \$15,000.00 per month, although "[h]er net income is unknown at present." However, according to Eberlin's employment contract, she was to receive annual raises, "the first in November 1997 to \$210,000.00 per year and the second \$240,000.00 in November 1998." Additionally, after these raises, Eberlin

¹ The total monthly nanny expense at that time was \$2,000.00, so Deal's share was \$500.00 per month.

was to be eligible for an interest in the partnership, resulting in a significant increase in her income.

As to both parties' reasonable needs, the trial court found that Eberlin had expenses averaging approximately \$13,839.59 per month. Her approximate take home pay, after taxes, was between \$10,000.00 and \$11,000.00 per month. The trial court gave additional consideration to the satisfaction of certain debts apportioned to Eberlin which were not listed in her expenses. These calculations resulted in Eberlin having a budget deficit of \$3,000.00 per month.

Evidence was presented that Deal's expenses totaled approximately \$10,590.00 per month. Deal testified that his monthly take home pay, before his bonus, was approximately \$7,800.00 per month. The trial court made a determination that Deal would be able to meet his reasonably necessary expenses and pay maintenance to Eberlin.

The trial court found that Eberlin was "not presently able to support herself through suitable employment in the style to which she and the parties' child became accustomed during the marriage and she lack[ed] sufficient property, including marital property apportioned to her, to provide for her reasonable needs." After considering the parties' incomes, which included income from both employment and property available for support, their respective monthly expenses, and their reasonable needs,

the trial court determined that Deal should pay Eberlin maintenance of \$3,000.00 per month, through the end of November 1997. Thereafter, the maintenance would be reduced to \$1,500.00 per month through the end of November 1998, then it would continue at \$500.00 per month for the next four years, after which it would terminate.

Both parties filed objections to the Commissioner's report; and by order entered on March 18, 1998, the circuit judge remanded the matter to the Commissioner "only for the recalculation of debts that might exist." All other aspects of the Commissioner's report were confirmed.

After various hearings and supplemental filings, on December 15, 2000, Deal filed a motion for entry of interlocutory decree. Included in the motion were allegations that Deal had filed a Chapter 11 bankruptcy petition on March 15, 1999, and that Eberlin had filed a Chapter 7 bankruptcy petition on June 2, 2000. On January 4, 2001, the circuit court entered its findings of fact, conclusions of law and decree of dissolution of marriage. The trial court adopted all provisions of the Commissioner's trial report, except those provisions that related to debt division, which were "specifically set aside pursuant to the Court's prior Order of March 17, 1998."² The trial court noted that the parties had filed for bankruptcy,

² The order was signed on March 17, 1998, but entered on March 18, 1998.

that Deal's Chapter 11 plan of reorganization had been confirmed, and that Eberlin's Chapter 7 order of discharge of debts had been entered. The trial court then noted that "[i]n neither bankruptcy proceeding did either party file any objection to dischargeability of debts pursuant to 11 U.S.C. 523(a)(15) . . . [and that] [a]s a result, both parties are stayed and/or enjoined from seeking an allocation of any debts which existed pre-petition." The trial court concluded that "any issue as to the allocation of debts is moot." This appeal followed.

In his brief, Deal identified three issues: (1) that the trial court erred by finding that Eberlin did not have sufficient property under KRS³ 403.200⁴ to provide for her

³ Kentucky Revised Statutes.

⁴ A determination of maintenance involves the application of KRS 403.200, which provides:

(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.

reasonable needs, (2) that the trial court erred by finding that Eberlin's reasonable needs exceeded her available support, and (3) that the trial court erred by not properly weighing those factors provided under KRS 403.200 when determining the amount of maintenance to award Eberlin. All three issues involve the trial court's failure to consider the effect the parties' bankruptcies had on the maintenance award. We are of the opinion that since all three of these issues are interrelated, that this matter can best be addressed, in light of both parties filing bankruptcy, by this Court determining whether the trial

- (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.

court failed to make adequate findings of fact to support the award of maintenance.

Our Supreme Court has held that under KRS 403.200, 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. In order to reverse the trial court's decision, a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion.⁵

In order for an award of maintenance to be proper, the elements of both KRS 403.200(1)(a) and (b) must be established.⁶ Thus, before awarding Eberlin maintenance, the trial court was required to first find that she 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 according to the standard of living established during the marriage.⁷ After these required findings are reviewed to determine whether they are supported by substantial evidence, this Court "must consider whether the amount awarded . . . constitutes an abuse of discretion."⁸

⁵ Russell v. Russell, Ky.App., 878 S.W.2d 24, 26 (1994)(citing Perrine v. Christine, Ky., 833 S.W.2d 825 (1992)).

⁶ Drake v. Drake, Ky.App., 721 S.W.2d 728, 730 (1986); Atwood v. Atwood, Ky.App., 643 S.W.2d 263, 265 (1982)(citing Inman v. Inman, Ky.App., 578 S.W.2d 266, 270 (1979)).

⁷ Id. at 730 (citing Lovett v. Lovett, Ky., 688 S.W.2d 329, 332 (1985)).

⁸ Drake, supra.

CR⁹ 52.01 provides that “[f]indings 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.” Furthermore, “[t]he findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court.”¹⁰ “The amount and duration of maintenance is within the sound discretion of the trial court.”¹¹ “The determination of whether to award maintenance is highly discretionary with the trial court after its consideration of the dictates of KRS 403.200.”¹² Because the trial court is in a better position than this Court to determine maintenance, “the amount of the award of maintenance is within the discretion of the chancellor and the exercise of that discretion will not be set aside unless it is clearly erroneous.”¹³

The trial court’s order entered on March 18, 1998, confirmed all aspects of the Commissioner’s trial report except it remanded the action only for the recalculation of debts that

⁹ Kentucky Rules of Civil Procedure.

¹⁰ CR 52.01.

¹¹ Russell, 878 S.W.2d at 26 (citing Gentry v. Gentry, Ky., 798 S.W.2d 928, 937 (1990); Combs v. Combs, Ky.App., 622 S.W.2d 679, 680 (1981) (citing KRS 403.200(2)); and Browning v. Browning, Ky.App., 551 S.W.2d 823 (1977)).

¹² Beckner v. Beckner, Ky.App., 903 S.W.2d 528, 530 (1995)(citing Browning, supra).

¹³ Newman v. Newman, Ky., 597 S.W.2d 137, 140 (1980)(citing Ballard v. Ballard, Ky., 411 S.W.2d 330 (1967)).

might exist. However, as noted by the trial court in its final decree, "[n]o further hearings were held before the Domestic Relations Commissioner as [Deal] filed a Chapter 11 bankruptcy proceeding and [Eberlin] filed a Chapter 7 bankruptcy proceeding. . . ." The trial court further stated that "those provisions as pertains to the division of debts . . . are specifically set aside pursuant to the Court's prior Order of March 17, 1998." The trial court concluded by stating that "any issue as to the allocation of debts is moot."

On February 6, 2001, Deal filed a motion to terminate maintenance, alleging that since the entry of the Commissioner's order, "both parties have filed a bankruptcy proceeding which has substantially changed the parties' respective debt load." In support of his motion, he attached his affidavit, wherein he argued that as part of his bankruptcy plan, he was making payments on debts for which Eberlin had been liable. Deal alleged that, to the best of his knowledge, all of Eberlin's debts, including debts that he was paying as part of his bankruptcy plan, were discharged, and that she no longer had any personal liability on those debts. He claimed that since Eberlin was earning substantially more income than she had earned at the time the trial court entered its order, he should not be required to pay maintenance.

Deal's motion to terminate maintenance was scheduled to be heard on March 21, 2001, and then rescheduled to be heard on May 16, 2001, and again rescheduled to be heard on July 6, 2001. However, on June 11, 2001, Deal gave notice of withdrawal of his motion to terminate maintenance.

CR 52.04 provides:

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

In his motion for entry of interlocutory order, Deal alleged that issues of debt division, property division, and maintenance remained for the trial court to decide; and that these issues would be impacted by both his and Eberlin's bankruptcy proceedings. Deal requested the trial court to reserve ruling on the issues of debt division, property division, and maintenance due to the parties' respective pending bankruptcy proceedings.

Deal has satisfied CR 52.04. Through his motion for entry of interlocutory decree, Deal brought to the trial court's attention his request for factual findings concerning a recalculation of debts following the bankruptcy proceedings. When determining Eberlin's reasonable needs, the trial court by

adopting the Commissioner's findings gave consideration to "the satisfaction of certain debts which are not listed in [her] expenses." The parties' financial situation which created Eberlin's budget shortfall of \$3,000.00 per month no longer existed after both parties filed bankruptcy. Thus, the trial court's failure to make sufficient factual findings to support an award of maintenance after the parties filed separate bankruptcy proceedings requires that the judgment be vacated and this matter be remanded for additional factual findings.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joy D. Denton
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

David F. Broderick
P. Kevin Hackworth
Bowling Green, Kentucky