

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-002675-MR

RICHARD K. RIDDLE

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 01-CI-00170

TERRY E. RIDDLE

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: COMBS, KNOPF, and TACKETT, Judges.

COMBS, JUDGE. This appeal is taken from an order entered by the Oldham Circuit Court in a dissolution proceeding. The appellant, Richard K. Riddle, contends that the trial court abused its discretion by awarding maintenance to his former spouse, Terry Riddle. We agree and reverse the award of maintenance by the trial court.

The parties were married in Jefferson County, Kentucky, in March 1999. They separated less than two years

later and were divorced by decree entered in August 2001. No children were born of the marriage.

We have carefully considered Richard's claim that maintenance was awarded improperly. The trial court awarded Terry the sum of \$500.00 per month for a period of eighteen months - to be followed by an award of \$360.00 per month until satisfaction of her car loan. After our review of the nature of the monthly expenses claimed by Terry, we conclude that an award of maintenance was not warranted in this case. We agree that the award constitutes an abuse of discretion.

KRS 403.200 governs the award of maintenance in a dissolution proceeding providing as follows:

(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.

The trial court found that Terry was entitled to maintenance because she lacks sufficient property to provide for her reasonable needs and is unable to support herself through appropriate employment. However, that finding is not supported by the record. It is true that Richard is able to support himself while also meeting Terry's needs, the needs of her children (some of which are extraordinary), and those of her

former spouse. However, he is simply under no legal obligation to do so. A review of the monthly expenses claimed by Terry indicates that she can support herself by meeting her reasonable needs. Despite the contrary finding of the trial court, the costs of Terry's reasonable expenses fall well within her monthly net income. Consequently, an award of maintenance cannot be justified.

We vacate the order awarding maintenance and remand for entry of an order consistent with this opinion.

TACKETT, JUDGE, CONCURS.

KNOPF, JUDGE, CONCURS.

KNOPF, JUDGE, CONCURRING BY SEPARATE OPINION: I fully concur with the reasoning and the result set forth in the majority opinion, but I write separately to expand upon the reasons for setting aside the trial court's maintenance award in this case. The decision to grant or deny a maintenance award, as well as the determination of the amount and duration of maintenance, lie within a trial court's sound discretion as it applies the governing factors of KRS 403.200 to the parties' circumstances upon dissolution of marriage.<sup>1</sup> Furthermore, "unless absolute abuse is shown, the appellate court must maintain confidence in the trial court and not disturb the

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<sup>1</sup>Leveridge v. Leveridge, Ky., 997 S.W.2d 1, 2 (1999). *Citing* 403.200(2).

findings of the trial judge.”<sup>2</sup> 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.”<sup>3</sup> Despite this high standard of review, I agree with the majority that the trial court’s factual findings are clearly erroneous, rendering the resulting maintenance award an abuse of discretion.

As correctly noted by the majority, a court may only grant maintenance if it finds that the spouse seeking maintenance (a) lacks sufficient property to provide for her reasonable needs; and (b) is unable to support herself through appropriate employment.<sup>4</sup> In awarding maintenance, the trial court focused on the fact that Terry had given up her full-time job in Ohio to move to Kentucky with Richard. Furthermore, the trial court noted that Terry had expended most of her non-marital assets during the move. Thus, despite the short duration of the marriage, the trial court concluded that Terry was entitled to short-term, rehabilitative maintenance. But in so doing, the trial court accepted Terry’s list of monthly

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<sup>2</sup> Weldon v. Weldon, Ky. App., 957 S.W.2d 283, 286 (1997); See also Clark v. Clark, Ky. App., 782 S.W.2d 56, 60 (1990); Platt v. Platt, Ky. App., 728 S.W.2d 542 (1987); and Moss v. Moss, Ky. App., 639 S.W.2d 370 (1982).

<sup>3</sup> Perrine v. Christine, Ky., 833 S.W.2d 825, 826 (1992).

<sup>4</sup> KRS 403.200.

expenses without considering whether they truly represented Terry's reasonable needs.

The term "reasonable needs" as used in the statute is a relative term. The courts must look at the standard of living which was enjoyed during the marriage. The mere fact that the wife can eke out a living is not sufficient to deny maintenance. It has been said that "[t]he statute, as did the law before, simply recognized that what might have been ample for a scullery maid is not necessarily sufficient for one accustomed to the life-style of a duchess..." "The anomaly that one who cannot work at all may have ... a better standard of living than one who is able to eke out the bare necessities of life." <sup>5</sup>

Conversely, however, a person's reasonable needs do not necessarily encompass all household expenses. Expenses incurred by other adults residing in the household or by children who were not born of the marriage can not be considered as part of a spouse's reasonable monthly expenses for purposes of calculating maintenance. In this case, Terry submitted a list of monthly expenses totaling \$3,387.00 per month, as opposed to a net income of \$2,607.00 per month. However, the trial court's initial order specifically states that Terry's list of expenses includes expenses for her children who were born of a previous marriage. Although the trial court's

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<sup>5</sup> Casper v. Casper, Ky., 510 S.W.2d 253, 255 (1974).

subsequent order disallowed a \$265.00 expense for one of the children's tuition payments, it still appears that the trial court included the childrens' other expenses in calculating Terry's reasonable needs. As the majority aptly states, Richard has no legal obligation to assist Terry in paying these expenses.

The trial court also noted that Michael Logar, Terry's former husband and the father of one of her children, has been residing in the household. A maintenance recipient's cohabitation can render continued maintenance unconscionable if the nature of the cohabitation constitutes a new "financial resource" as contemplated in KRS 403.200(2)(a). In Combs v. Combs,<sup>6</sup> the Kentucky Supreme Court outlined six elements which should be considered to determine whether co-habitation renders continued maintenance unconscionable: (1) Duration -- A showing of substantially changed circumstances under KRS 403.250(1) based upon cohabitation, necessarily involves proof of some permanency or long-term relationship; (2) Economic Benefit -- If the "cohabitation" does not change the cohabitating spouse's economic position, then reductions should not be permitted; (3) Intent of the Parties -- Does it appear from the circumstances that the cohabitating parties intend to establish a lasting relationship or are avoiding re-marriage to keep maintenance;

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<sup>6</sup>Ky., 787 S.W.2d 260 (1990).

(4) Nature of the Living Arrangements -- Does it appear that the cohabitation is merely a space sharing situation or is there one common household; (5) Nature of the Financial Arrangements -- Is there actually a joint or team effort in the living arrangement; and (6) Likelihood of a Continued Relationship -- Does it appear that the relationship will continue in the future? <sup>7</sup>

The trial court accepted Terry's testimony that Mr. Logar's presence was a temporary measure, even though he had been residing in the household for five months when the court entered its order denying Richard's motion to alter, amend, or vacate. Yet even if Terry's co-habitation with her former husband does not constitute a new financial resource, it clearly affects the court's calculation of her reasonable needs. On the one hand, expenses which are attributable to Mr. Logar should not be included as part of Terry's reasonable needs. On the other hand, Terry concedes that she is sharing expenses with her former husband. A court may reasonably consider any amounts contributed by adults residing in the household in calculating a spouse's expenses. The trial court's conclusion that Terry's income is insufficient to meet her reasonable needs is based on an erroneous calculation of her expenses.

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<sup>7</sup> Id. at 262-63.

In conclusion, I recognize that courts may properly award maintenance in short-term marriages.<sup>8</sup> Nevertheless, a spouse's reasonable needs should not be inflated by the inclusion of improper expenses. Furthermore, the trial court must recognize that a balancing of equities which could be accomplished as part of a division of marital property is not appropriate in determining whether a spouse is entitled to maintenance. If the spouse seeking maintenance is able to meet her reasonable needs through appropriate employment, then she is not entitled to maintenance and the factors set out in KRS 403.200(2) do not apply. Because Richard has no obligation to support Terry's former husband or her children by other marriages, those expenses cannot be considered in calculating her reasonable needs. In this case, the record is clear that Terry has sufficient income and resources to meet her reasonable needs and is able to support herself through appropriate employment. Therefore, I agree with the majority that the trial court abused its discretion by awarding maintenance to Terry.

BRIEF FOR APPELLANT:

D. Berry Baxter  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Laura Ellen Stoess  
Crestwood, Kentucky

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<sup>8</sup> See Van Bussum v. Van Bussum, Ky. App., 728 S.W.2d 538 (1987) (maintenance award appropriate after six-year marriage); and Carter v. Carter, Ky. App., 656 S.W.2d 257 (1983) (maintenance award may be appropriate even after a two-year marriage).