

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000323-MR

JOHN T. GARRETT

APPELLANT

v. APPEAL FROM HENRY CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 00-CI-00147

IRENE GARRETT AND THE LAW FIRM  
OF SKAGGS AND ASSOCIATES

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: John Garrett appeals from a judgment of the Henry Circuit Court in an action for dissolution of marriage awarding his former spouse, Irene Garrett, permanent maintenance and a portion of her attorney's fees and costs. We affirm.

John and Irene were married May 7, 1954, when she was eighteen years old. At the time of her marriage, Irene did not have a high school diploma so she worked various factory jobs and contributed her earnings to the family. Eventually, Irene

saved enough money to pay for cosmetology school and she obtained her beautician's license. She operated a business out of a mobile home situated on their property and also made weekly trips to three nursing homes where she performed hairdressing services. In addition to working outside the home, Irene raised the parties' two children, cooked, cleaned the home, did laundry, mowed the property and stripped tobacco. She also collected the rents, paid the bills, supervised maintenance, and handled tenants' problems associated with rental properties she and John owned.

During this time, John built a successful career as the owner of a one-half interest in eight H&R Block franchises and Sligo Sports, a store which sold sporting goods. He spent approximately \$15,000.00 each year on numerous hunting expeditions and safaris around the world, accumulating a gun collection worth \$70,000.00 and a \$30,000.00 taxidermy collection. Irene was never taken on a vacation, cruise or trip to the beach because John did not enjoy these types of excursions. During the course of their marriage, Irene was allowed to accompany John on one fishing trip to Tennessee. In addition, John never revealed any details about their financial assets to Irene; instead, he gave her \$1,000.00 dollars per month as a household budget. At the time of their divorce,

John's annual income from his business ventures totaled some \$200,000.00 despite the seasonal nature of the enterprises.

After forty-six years of marriage, irreconcilable differences arose between the parties. Irene and John, who were both represented by counsel, entered in a property settlement agreement on March 8, 2001, as part of the action to dissolve their marriage. The issues of maintenance, attorney's fees and costs to Irene were reserved for trial. A trial was held on May 31, July 25, and September 25, 2001; afterwards the trial court entered an order awarding Irene permanent maintenance in the amount of \$2,000.00 per month, \$14,600.00 towards her attorney's fees and \$2,090.00 of her costs. John filed this appeal, naming Irene and her counsel as appellees.

John first argues that the trial court improperly awarded permanent maintenance to Irene. Kentucky Revised Statute (KRS) 403.200 outlines the factors which a trial court must take into account prior to awarding spousal maintenance.

The statute reads in part as follows:

- (1) In a proceeding for dissolution of marriage or legal separation . . . 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 . . .

- (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, independently . . .  
. . .
  - (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.

Once the trial court has made a determination that one spouse is entitled to receive maintenance from the other, we will not disturb its award unless the findings of fact are clearly erroneous or the trial court has abused its discretion. Perrine v. Christine, Ky., 833 S.W.2d 825, 826 (1992).

In 2000, Irene had an income of \$13,000.00 from operating her beauty shop and visiting the nursing homes; however, in 2001, Irene anticipated that her income would only be \$9,000.00 and would decline further in future years. At the time of the trial, Irene, aged 65, was physically unable to stand on her feet for long periods of time and, in particular,

had difficulties serving her nursing home clients who often required assistance in order to move. Irene expected that she would soon have to cease all work at the nursing homes leaving her with approximately \$1,000.00 per year income from the beauty shop. The marital estate was divided evenly between the parties with John and Irene each receiving at least \$695,000.00 in assets, and Irene has income from rental properties and stock dividends. In addition, Irene has income from Social Security, with her income from all sources expected to total \$32,099.00 in 2001.

Irene estimated her total yearly expenses at \$50,640.00; however, the trial court disallowed \$7,600.00 in expenses related to support for the parties' adult son who has a substance abuse problem. The trial court included costs for Irene's therapist and psychiatrist and, in light of John's lavish standard of living during the marriage, allowed Irene to plan for some travel and gifts to family members. In determining whether Irene has sufficient property, including marital property which she received, to meet her needs pursuant to KRS 403.200, the trial court must determine whether her property "will yield income or profits sufficient for her comfortable maintenance in a style suitable to the social standing established by the parties during marriage without her being required to consume the principal." Colley v. Colley, Ky.

App., 460 S.W.2d 821,827 (1970). Clearly, the income-producing capacity of Irene's property is insufficient to meet her yearly expenses of \$43,040.00; thus the trial court correctly found that she was entitled to receive maintenance.

In determining the length and amount of the maintenance award, the trial court considered statutory factors such as the standard of living established during the marriage, the length of the marriage, Irene's age and physical and emotional condition, and John's ability to meet his needs while paying maintenance to Irene. The parties were married for forty-six years and the evidence established a pattern of expensive hobby travel and collecting on John's part. Although Irene's lifestyle was much simpler, this was attributable to her husband's failure to inform her of their financial resources and to permit her to share in his luxurious habits. Irene was physically unable to continue the amount of demanding labor she had been performing through the years, and consequently her ability to earn income was diminished. Although the parties received the same amount of marital property, John's assets had an income producing capability of around \$225,800.00 a year while his yearly expenses were \$133,548.00. Taking all of these factors into consideration, the trial court properly awarded Irene \$2,000.00 maintenance per month until her death or remarriage.

John next contends that the trial court erred in ordering him to pay a portion of Irene's attorney's fees and costs. He complains that his own attorney only billed him \$5,500.00 at an hourly rate of \$100.00, while Irene hired attorneys from Louisville who billed \$125.00 and \$200.00 per hour. Irene's counsel points out that John hired the son of his business partner who may have given him a discount on his services. Furthermore, Irene's attorneys were forced to expend large amounts of time obtaining financial information which John disclosed only reluctantly.

The trial court has the discretion to award attorney's fees and costs in any divorce case where there is a disparity in the parties' financial resources. Drake v. Drake, Ky. App., 721 S.W.2d 728 (1986); Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990). In the case *sub judice*, the trial court found that Irene's annual income would be \$32,099.00, without maintenance, while John's expected income was \$275,800.00 per year. Irene incurred \$23,073.00 in attorney's fees and costs in excess of \$3,000.00. The trial court ordered John to pay \$14,600.00 of Irene's attorney's fees and \$2,090.00 of her costs. We are unable to say that the trial court's order was an abuse of its discretion.

For the forgoing reasons, the judgment of the Henry Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marshall V. Gaither  
Pewee Valley, Kentucky

BRIEF FOR APPELLEES:

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