

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001664-MR

GEORGE STEPHEN RICHTER

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CYNTHIA SANDERSON, JUDGE
ACTION NO. 02-CI-00004

BETH ANN RICHTER

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, GUIDUGLI AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. George Stephen Richter (hereinafter "George") appeals from a decree of dissolution of marriage entered July 3, 2002, by the McCracken Family Court which, in part, ordered him to pay maintenance in the amount of \$600 per month for a period of 72 months. We affirm.

George and Beth Ann Richter (hereinafter "Beth Ann") were married on February 17, 1973. The parties separated on October 1, 2001, and George filed a petition for dissolution of

marriage on January 2, 2002. Following discovery and a settlement conference, the matter was set for a final hearing before the McCracken Family Court on July 1, 2002. Most issues had been resolved prior to the final hearing. However, several issues as to the parties' retirement funds, maintenance and attorney fees still needed to be resolved. Following the July 1, 2002, hearing, the trial court rendered findings of fact and conclusions of law and the final decree of dissolution on July 3, 2002. From those findings of fact and conclusions of law, George only objected to the amount and duration of the maintenance order. In fact, George filed a CR 59.05 motion to alter or amend the judgment as to the maintenance award. However, the motion was filed untimely (July 19, 2002) and as such, the Family Court never addressed it. This appeal followed.

On appeal, George contends that the Family Court abused its discretion in the amount and duration of the maintenance awarded. Specifically, he "argues that the court abused its discretion in three respects: 1. the maintenance award is unjust in light of the property disposition made, though equal on paper; 2. the amount of maintenance was not supported by the proof; 3. the award of maintenance for six years was not supported by the proof." Beth Ann, on the other hand, argues that George's brief should be stricken for failure

to comply with CR 76.12, that the issue is not properly preserve for review since George's CR 59.05 motion was untimely filed, and that the Family Court's order was based on the evidence presented and completely in line with the requirements of KRS 403.200, and thus, not an abuse of the court's discretion.

While we agree with Beth Ann that George's appellant brief fails to properly comply with CR 76.12¹ and that he failed to preserve the issue due to the fact that his CR 59.05 motion was untimely², we decide to address the issue presented in that we believe the appeal lacks merit. KRS 403.200 sets forth the conditions under which a court may grant maintenance as follows:

- (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of 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

¹ George's appellate brief failed to comply with CR 76.12(4)(c)(iv) and (v).

² Following the final hearing on July 1, 2002, in closing argument to the court George's attorney stated, "I do recognize that he is going to pay her some maintenance per moth, but \$800 is grossly unreasonable." The Family Court ordered only \$600 for 72 months and no valid pleading was filed objecting to that amount. As such, the Family Court was never presented an opportunity to review the issue.

- (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.

In reference to the provisions of KRS 403.200, the Kentucky Supreme Court stated in Perrine v. Christine, Ky., 833 S.W.2d 825 (1992), as follows:

Under this statute, 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.

Id. at 826. In Weldon v. Weldon, Ky.App., 957 S.W.2d 283 (1997), this Court also stated that:

We are mindful that the amount and duration of maintenance is within the sound discretion of the trial court. Russell v. Russell, Ky.App., 878 S.W.2d 24, 26 (1994). Furthermore, we are mindful that in matters of such discretion, "unless *absolute abuse* is shown, the appellate court must maintain confidence in the trial court and not disturb the findings of the trial judge." Clark v. Clark, Ky App., 782 S.W.2d 56, 60 (1990). (Emphasis added.) See also Platt v. Platt, Ky.App., 728 S.W.2d 542 (1987), and Moss v. Moss, Ky.App., 639 S.W.2d 370 (1982).

Id. at 285-86.

In the matter before us, the parties stipulated as to the division of most of the property. Based upon that agreed division of assets and the evidence presented at the final hearing the Family Court made the following determination that Beth Ann was entitled to periodic maintenance:

[Beth Ann] requested maintenance. The Court finds that [Beth Ann] is age 48, the parties were married 29 years, and [Beth Ann] is employed as a cashier at Hobby Lobby at net month wages of \$838.00. [Beth Ann] reported she needed \$800.00 per month to meet her monthly living expenses. The Court finds that [George] is age 48 and employed at TVA as a maintenance planner at net monthly wages of \$2,476.00. [George] reported he had monthly living expenses of \$2,252.00. The Court finds that [Beth Ann] lacks sufficient property to provide for her reasonable needs and is unable to support herself through appropriate employment. It is hereby ordered that [George] pay to [Beth Ann] maintenance in the amount of \$600.00 per month for a period of 72 months beginning July 1, 2002 and being due the first of each following month. Said maintenance shall terminate at the earliest of the following dates: [Beth Ann's] remarriage, [Beth Ann's or [George's] death or the completion of 72 monthly payments. As of July 1, 2002, [Beth Ann] shall be responsible for paying the mortgage owed against the marital residence.

A review of the findings of fact indicate that Beth Ann received little income producing income from the divorce, that she is unable to support herself through appropriate employment, and that her requested expenses were both reasonable and necessary. Further, the findings of the Family Court clearly indicate that it considered all relevant factors set forth in KRS 403.200 prior to determining to award maintenance to Beth Ann and then in the amount and duration of said maintenance.

As stated by the Kentucky Supreme Court in Combs v. Combs, Ky., 787 S.W.2d 260, (1990):

As an appellate court, neither the Court of Appeals nor this Court is authorized to substitute its own judgment for that of the trial court on the weight of the evidence, where the trial court's decision is supported by substantial evidence.

Id. at 262.

The evidence cited by the Family Court in its findings of fact and conclusions of law supports its maintenance award. As such, the order of the McCracken Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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