

Commonwealth Of Kentucky

Court of Appeal

NO. 2003-CA-000695-MR (CROSS-APPEAL)

JAMES E. PENDLETON

CROSS-APPELLANT

APPEAL FROM JEFFERSON FAMILY COURT
v. HONORABLE JOSEPH O'REILLY, JUDGE
ACTION NO. 01-FC-003098

CYNTHIA R. PENDLETON and
TERRY W. HOLLOWAY

CROSS-APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND MINTON, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

GUIDUGLI, JUDGE: James E. Pendleton appeals from findings of fact, conclusions of law, judgment and decree of the Jefferson Family Court in an action dissolving his marriage with Cynthia R. Pendleton. James maintains that the judgment improperly treated an employment bonus as income, failed to correctly dispose of personal property, and improperly awarded spousal

¹ Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

support and costs and fees. For the reasons stated below, we affirm the judgment on appeal.

James and Cynthia were married on September 16, 1989, in Jefferson County, Kentucky. Two children were born of the marriage - Brittany in 1992, and Nicholas in 1995. The parties separated in April 2001, and James subsequently filed a petition in Jefferson Family Court seeking to dissolve the marriage.

On December 31, 2002, the Jefferson Family Court rendered its findings of fact, conclusions of law, judgment and decree. The decree dissolved the marriage and addressed a number of issues including child custody, division of marital property, maintenance and child support. Of relevance to this appeal, the court treated James's 2000 employment bonus as income; it declined to divide the personal property with "exactitude" upon finding that it had not been appraised, but rather permitted each party to keep the personal property already in his or her possession; and, it awarded maintenance, fees and costs to Cynthia.

Cynthia appealed from the December 31, 2002, judgment, and James cross-appealed. On January 13, 2004, we granted Cynthia's motion to dismiss her appeal.

James argues that the Jefferson Family Court erred by treating his 2000 employment bonus as both income for the purpose of calculating child support and property for the

purpose of dividing marital property. We have closely examined this argument and find no error.

As Cynthia correctly notes, income may properly be treated by the court first as income and later as property. An individual earning \$25,000 per year, for example, is attributed with that income in that amount by operation of KRS 403.212(2)(b). The portion of that income which is retained for later use then is characterized as an asset subject to property division under KRS 403.190.

James cites no case law or statutory law in support of his assertion that the trial court erred on this issue. The trial court is presumptively correct in its rulings,² and James has presented nothing to overcome that presumption. In the absence of any support for his assertion, James's claim of error must fail. Accordingly, we find no error.

James next contends that the trial court erred by failing to divide certain personal property in just proportions. He does not state in his brief, however, what the personal property consists of, what its value is, or why the division was not in just proportions in accordance with KRS 403.190. As such, we have no basis for tampering with the order on appeal as it relates to this issue.

² City of Louisville v. Allen, 385 S.W.2d 179 (Ky. 1964).

James's third argument is that the trial court erred in awarding maintenance without evidence that Cynthia lacked sufficient income to meet her reasonable needs. He notes that because Cynthia only proved monthly expenses in the amount of \$400, the maintenance award in favor of Cynthia in the amount of \$600 is excessive and should be reversed.

We find no basis for reversing the trial court's findings and order on this issue. The court was fully apprised of the parties' incomes, monthly expenses, and marital and non-marital assets, and it rendered its award of maintenance in light of KRS 403.200. The award of maintenance is supported by the record and the law, and as such we find no error.

James's final argument is that the trial court erred by awarding to Cynthia fees and costs where no evidence was introduced at trial on this issue. He maintains that the court lost its discretion to award fees and costs because the first evidence of her fees and costs came in the form of an affidavit filed by her counsel ten days after the trial concluded.

In the decree, the court addressed the issue of attorney's fees and costs as follows:

K.R.S. 403.220 states:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending

any proceedings under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.

It has been a firmly held principle that, after a finding of disparity between the parties' financial resources, the determination of attorney's fees is in the sole discretion of the trial judge. *Wilhoit v. Wilhoit*, Ky., 521 S.W.2d 512 (1975).

In the case before use (sic), [Cynthia] indicated that she had accumulated \$26,892.45 in attorney's fees and costs. No evidence was presented by [James] refuting the reasonableness of this figure. There is clearly a disparity in the parties' salaries and financial resources. In the interest of promoting an equitable result, this Court has determined to assign [James] responsibility to pay \$15,000.00 of [Cynthia's] attorney's fees and costs.

Nothing in the record compels us to conclude that Judge O'Reilly abused his discretion in awarding fees and costs to Cynthia, and accordingly we find no error.

For the foregoing reasons, we affirm the findings of fact, conclusions of law, judgment and decree of the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR CROSS-APPELLANT:

J. Russell Lloyd
Louisville, KY

BRIEF FOR CROSS-APPELLEE:

Steven J. Kriegshaber
Louisville, KY