

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-001317-MR

BETTY JEAN BALL

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS WALLER, JUDGE
ACTION NO. 97-CI-00161

GARY DEAN BALL

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

KNOPF, JUDGE: Betty Ball appeals from an order of the Bullitt Circuit Court, entered May 23, 2003, adopting recommendations by the domestic relations commissioner that the maintenance Betty receives from her former husband, Gary Ball, be reduced to \$400.00 per month as of September 13, 2000, and that Gary pay Betty \$1,851.00 to settle Betty's claim for maintenance arrearages through March 31, 2002. Betty, who claimed some \$18,000.00 in arrearages, contends that the commissioner and the

court erred by giving Gary credit for his share of marital equity in the former marital residence. We affirm.

The parties' 1976 marriage was dissolved by partial decree entered in May 1997, and in June 1997 the commissioner recommended that by way of temporary maintenance Gary make the \$450.00 monthly mortgage payment on the former marital residence. In 1998, while the divorce action was still pending, Gary petitioned for Chapter 7 bankruptcy relief. The outcome of that proceeding does not appear in the record. In July 1999, the trial court adopted the commissioner's temporary maintenance recommendation. Apparently Gary failed to make the mortgage payments, so that Betty's claim for arrearages was among the issues before the commissioner at the final hearing in September 2000. Following that hearing the commissioner eventually recommended that the maintenance award be reduced to \$400.00 per month and that Gary's arrearages be set-off against his share of the marital assets, in particular the equity in the marital residence, leaving a balance owed to Betty as of March 31, 2002, of \$1,851.00.

It is from the trial court's adoption of the later recommendation that Betty has appealed. She does not dispute the calculation of Gary's share of the equity, but contends that his 1998 bankruptcy petition in effect surrendered that share to the bankruptcy trustee who then became the only one who could

assert a right to it. Betty is generally correct, of course, that by petitioning for bankruptcy relief a debtor surrenders all of his interests in property to the bankruptcy estate.¹ She does not assert, however, that the trustee disposed of Gary's interest in the residence, and there are routine avenues whereby property, particularly homestead property such as this, is returned from the bankruptcy estate to the debtor. The property may be deemed exempt from bankruptcy administration, for example,² or it may be abandoned by the bankruptcy trustee.³ Betty's treatment of this issue is cursory, at best. There is no indication in the scant record before us that there was any impediment, bankruptcy or otherwise, to Gary's assertion of his interest in the marital property.

Equally without merit is Betty's contention that the trial court has in effect "discharged" Gary's maintenance obligation contrary to the federal bankruptcy statutes. The trial court did not hold that Gary need not pay the arrearages; it merely permitted him to make a portion of the payment with his interest in the residence, an interest, again, that Betty does not deny.

¹ 9A Am. Jur. 2d *Bankruptcy* § 1083 *et seq.* (1999).

² *Id.* at § 1245 *et seq.*

³ *Id.* at § 1196 *et seq.*

Betty having failed to meet her burden of identifying facts in the record that would entitle her to relief, we affirm the May 23, 2003, order of the Bullitt Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Timothy Denison
Louisville, Kentucky

BRIEF FOR APPELLEE:

R. Allen McCartney
Louisville, Kentucky