

RENDERED: JULY 29, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001856-MR

KAREN LYNN STEPHENS

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 01-CI-00510

OSCAR GLEN STEPHENS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Karen Stephens appeals from an order of the Greenup Circuit Court awarding her maintenance as a result of the dissolution of her marriage to Oscar Stephens. Karen contends that the amount of maintenance she was awarded is insufficient to meet her needs. After considering all of the statutory factors governing maintenance awards, we affirm the trial court's decision.

The parties were divorced in 2002 after thirty-three years of marriage. Only one of their four children was still under the age of eighteen, and Karen was awarded custody and child support. At the time of their divorce, Karen was fifty years old and Oscar was fifty-six. Karen had primarily been a homemaker, but did have some history of employment as a certified nursing assistant with her highest salary being \$6.85 per hour. Oscar had worked for the railroad until he became disabled in 1999.

During their marriage, Karen and Oscar acquired a farm where their marital residence was located. Prior to the decree of dissolution, they sold the property and split the \$175,000.00 proceeds. Karen used her half to buy a \$45,000.00 home and expended the remainder of her funds on remodeling. Oscar repaid a \$10,000.00 loan from his parents and paid off the \$12,000.00 balance owed on a boat which he retained. He bought an R.V. and made it his home, residing six months out of every year in Florida. At the time of the divorce, Oscar had \$53,000.00 in savings, \$40,000.00 of which was non-marital funds from a pain and suffering award.

At the time of the hearing in front of the Domestic Relations Commissioner (DRC), Oscar's monthly income was \$2,551.00 per month. He claimed that it would soon be reduced by \$289.00 per month being paid by a disability policy. Karen

was working a seasonal job at Greenbo Lake State Park for \$5.46 per hour. She was also receiving \$400.00 in temporary maintenance and \$360.90 for child support. The DRC's report recommended a maintenance award of \$300.00 per month. Karen filed exceptions to the report which were overruled by the circuit court. The trial court's order adopted the findings and recommendation in the DRC's report. This appeal followed.

Karen alleges that the \$300.00 per month maintenance award was insufficient and that the trial court should have considered increasing her maintenance after the parties' daughter was emancipated to offset her loss of child support. The trial court's order is reviewed for abuse of discretion. Powell v. Powell, 107 S.W.3d 222 (Ky. 2003). Kentucky Revised Statute (KRS) 403.200, which governs maintenance awards, states 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.

Karen contends that she lacks the resources to provide for her needs. KRS 403.200(2)(a). Each party received a significant amount of marital property after the parties' residence and farm were sold. The trial court made a factual finding that Karen received \$3,066.00 more in marital property because Oscar used some of his sale proceeds to pay marital indebtedness.

Nevertheless, Karen stated that she had expenses of \$1,600.00 per month, and a monthly income (including child support which has since stopped) of only \$1,190.00. Based on her testimony, Karen's expenses exceeded her income by \$400.00 per month; yet, the trial court awarded her only \$300.00 in monthly maintenance.

In response, Oscar points out that Karen chose to immediately expend her entire share of proceeds of the sale of their marital property purchasing and remodeling a home. She, therefore, has no mortgage or rent payment. Further, in addition to the parties' daughter - who was still a minor at the time of the divorce - an adult daughter, son-in-law and two grandchildren were sharing Karen's home. She admitted that some of the remodeling expenses were necessary to accommodate these family members whom she and Oscar have no obligation to support.

Karen claims that she is unable to maintain the standard of living the parties' enjoyed during their lengthy marriage with what she can earn. KRS 403.200(2)(c)-(d). Her future plans include thirteen to sixteen months of schooling to obtain certification as a Licensed Practical Nurse to increase her earning power. KRS 403.200(2)(b). Oscar contends that, due in part to his disabling accident, neither party will be able to enjoy the standard of living achieved during their marriage. Further, the trial court is required to consider his ability to meet his financial needs while providing maintenance to meet Karen's. KRS 403.200(2)(f). Oscar testified that his monthly expenses were \$2,998.40 and his income \$2,551.00 per month. This included the \$320.00-\$400.00 per month to rent a space for his R.V.

Based on the evidence before the trial court, we conclude that the court did not abuse its discretion in reaching its decision as to the amount of the maintenance award. Therefore, the judgment of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Malenda S. Haynes
Grayson, Kentucky

BRIEF FOR APPELLEE:

William R. Palmer, Jr.
Greenup, Kentucky