

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002606-MR

ROBERT WILLIAMS

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DOUGLAS M. STEPHENS, JUDGE
ACTION NO. 00-CI-02481

SEATTIE WILLIAMS

APPELLEE

OPINION
AFFIRMING IN PART AND
REVERSING AND REMANDING IN PART

** ** * * *

BEFORE: BARBER, HENRY, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant, Robert Williams (Robert), appeals the Kenton Circuit Court opinion dividing property between the parties, and requiring Robert to pay maintenance to Appellee, Seattie Williams (Seattie). We affirm in part and reverse and remand in part.

The parties lived together beginning in 1991, and were married in 1998. Robert filed for dissolution in 2000. Robert has longstanding stable employment. Prior to and during the marriage Seattie worked in the family business. Seattie did not

earn a salary for this work. Seattie also briefly held outside employment during the marriage. Since the tragic murder of her father in 2001, Seattie has been unemployed and under medical care. The record contains substantial evidence provided by Seattie that she is psychologically disabled, due to post-traumatic stress disorder, major depressive disorder with psychotic features, anxiety disorder and adjustment disorder. Seattie was medically approved for Social Security benefits in 2001. Her resources were too high for payment of such benefits at that time due to an inheritance from her father. The record contains evidence showing that the inheritance has since been depleted.

At the time of the marriage, Robert owned a home. At the time of the dissolution, the home was valued at \$110,000. Robert purchased the home in 1978 for \$38,000. There was an outstanding mortgage on the home of \$21,000 at the time Robert and Seattie began to live together. Seattie became co-obligor on an equity loan on the home. At the time of the dissolution, the trial court determined that \$90,000 was the marital interest of the parties in the home.

At the time of the dissolution, the court awarded Robert 60% of the marital estate, and Seattie was awarded 40%. Pursuant to the court's order, Robert was required to pay Seattie \$31,775 for her marital share in the residence. Robert

was ordered to pay maintenance of \$200 per month for Seattie's medications and an additional \$100 a month as separate maintenance for the period of one year. Robert was also ordered to pay \$750 towards Seattie's attorneys' fees for the dissolution.

Robert claims that the court failed to give him credit for his full non-marital interest in the home. He contends that the court improperly gave Seattie an interest in the home dating back to the time when the parties began living together in 1991 rather than from the date of the marriage in 1998. Robert contends that only \$21,000 was outstanding on the mortgage to the home at the time of the parties' marriage. He argues that the remaining \$90,000 left of the \$110,000 value of the home was non-marital property. The court valued Robert's non-marital interest in the home as \$20,000 based on the value of the real estate at the time the parties began living together (\$41,000) with the \$21,000 debt on that home at the time subtracted.

Robert argues that Seattie had no interest in the home prior to the date of the marriage, in 1998. He further contends that she gained no interest in the home through the marriage, because she failed to contribute financially to the purchase or upkeep of the home following the marriage. Robert cites Murphy v. Bowen, 756 S.W.2d 149 (Ky.App. 1988), and Glidwell v.

Glidwell, 790 S.W.2d 925 (Ky.App. 1990), as holding that a girlfriend has no equity interest in her boyfriend's property.

The trial court found that Robert's pre-marital interest in the residence was only \$20,000 and that the value of the residence at the time of dissolution was \$110,000, leaving \$90,000 as the marital interest to be divided between the parties. The court found that there was no debt encumbrance on the real estate at the time of dissolution and allocated the marital property 60% to Robert and 40% to Seattie. Leaving aside the unexplained discrepancy in the calculation of Seattie's share of the real estate,¹ in our view the award is contrary to the holding of Murphy v. Bowen, 756 S.W.2d 149 (Ky.App. 1988).

Robert bought the property in 1978 and had owned it for 13 years before the parties began to live together. The trial court valued the residence at \$41,000 in 1991 (the year the parties began to cohabit) and found that at that time there was a \$21,000 mortgage on the property. Deducting the mortgage from the 1991 valuation, the court assigned Robert a nonmarital interest of only \$20,000 although it is undisputed that the parties did not marry until 1998 and were married for only two years. The year 1991 has no relevance whatever in calculating

¹ 40% of \$90,000=\$36,000. The court found that the property is unencumbered. If the amount of the equity loan assigned to Robert (\$13,200) is deducted from the value of the property prior to division the calculation would be 40% of \$76,000.00, or \$30,720.00.

the value of the residence. The court made no finding that Seattie's efforts after the marriage added any value to the residence, nor was there any attempt to determine the value of the residence in 1998. Rather than follow the requirements of KRS²403.190 and Kentucky case law, the court apparently fashioned an award for Seattie for her contributions during the cohabitation. The common law of Kentucky does not imply contractual rights or obligations from voluntary cohabitation. Murphy, supra. "Were it otherwise, the courts, in effect, would be reinstating by judicial fiat common law marriage which by expressed public opinion is not recognized." Id. at 150. For the reasons stated above, we reverse the portion of the judgment awarding Seattie \$31,775 as her share in the value of the marital residence and remand with directions that the residence be re-valued as of the date of the marriage and that the pre-marital value of the residence be set apart to Robert as nonmarital property.

As to the maintenance issue, the court found Robert's annual earning ability was \$35,000 and that Seattie's earning ability was temporarily zero. The court also found that Seattie was temporarily disabled at the time of the dissolution, and ordered Robert to pay monthly maintenance of \$300 (\$200 for medications, and \$100 for support) for a year. Robert claims

² Kentucky Revised Statute.

that the court erred in ordering him to pay maintenance to Seattie. He asserts that with the \$31,775 from her share of the marital property, and the \$20,000 she inherited in 2001, she had sufficient resources to support herself. In her responses to discovery requested, Seattie informed the court that her inheritance had been substantially depleted, and that the funds had been used to assist her two children from a prior marriage with high school and college expenses. Robert has made no showing that Seattie has resources sufficient to meet her needs in the absence of temporary maintenance.

The purpose of maintenance is to enable the non-working spouse to return to the work-force. Powell v. Powell, 107 S.W.3d 222, 224 (Ky. 2003). "Maintenance may be awarded if the spouse seeking it cannot otherwise provide for their reasonable needs." Leveridge v. Leveridge, 997 S.W.2d 1, 2 (Ky. 1999), citing KRS 403.200(1)(a). The uncontroverted medical evidence shows that Seattie is temporarily unable to work. The record contains evidence showing Seattie's expenses, and the sums she must pay for medically necessary medications. The court did not abuse its discretion in determining the necessity of an award of maintenance for a year.

For these reasons, we affirm the Kenton Circuit Court with regard to the award of maintenance; reverse that portion

regarding the appellees' interest in the property, and remand for findings consistent with this Opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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