

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000205-MR

RONALD MCKENZIE

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 99-CI-00107

SUE MCKENZIE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, SCHRODER, AND VANMETER, JUDGES.

DYCHE, JUDGE: Ronald McKenzie appeals from an order of the Greenup Circuit Court denying his motion to reduce his maintenance obligation to his ex-wife Sue McKenzie.

Ronald and Sue were divorced in January, 2000. The decree of dissolution provided, among other things, that Ronald pay Sue \$900.00/month maintenance. Ronald was a railroad employee, and elected to retire early; as a result, his income was reduced from approximately \$40,000/year to \$2136/month. Sue receives \$384.77/month as a result of his early retirement.

Ronald asked the trial court to reduce his maintenance obligation due to his reduced income, and the extra amount Sue is receiving.

The trial court declined, adopting the Domestic Relations Commissioner's recommendation that this change was not "substantial" pursuant to KRS 403.250 and Barbarine v. Barbarine, 925 S.W.2d 831 (Ky. App. 1996). The commissioner found that Ronald had not met his burden under those guidelines to justify a reduction. Ronald testified that he just wanted to "take it easy." The commissioner did not begrudge this option, but found that Sue should not be penalized for Ronald's decision. Ronald argues that she is receiving more now than before his retirement and he is therefore entitled to a reduction. The commissioner found that this extra benefit to Sue was due to a "previous division of a pension plan determined to be a marital asset."

While we might have ruled differently, we cannot say that the ruling of the trial court was an abuse of discretion. Barbarine, 925 S.W.2d at 832. The order of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

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