

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000245-MR

VALDA CHRISTINE WRIGHT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDA M. HELLMANN, JUDGE
ACTION NO. 01-FC-001257

RICHARD LEE WRIGHT

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: BARBER, MINTON, AND TAYLOR, JUDGES.

BARBER, JUDGE: This appeal stems from a dissolution of marriage proceeding originating in Jefferson County, Kentucky. The parties were married May 27, 1978, and separated in December 2000. Two children were born of the marriage, but each had reached the age of majority before a decree dissolving the marriage was entered. Appellant, Valda Christine Wright (Valda), filed for the dissolution of marriage February 13, 2001. At that time, Appellee, Richard Lee Wright (Richard), resided in California necessitated by his job as a buyer for a

department store. Valda resided with him briefly in California, but returned to the parties' marital home in Louisville in December 2000. The divorce proceedings between the parties were less than amicable.

Valda was awarded temporary maintenance of \$1,200 per month July 31, 2002. Valda's temporary maintenance was increased to \$1,300 per month July 28, 2003. A final hearing was held before Special Judge Carl Hurst on September 30, 2003. A decree was entered October 21, 2003 awarding Valda maintenance of \$1,200 per month until December 31, 2004. Valda filed a CR 59.05 motion October 30, 2003 asking the court to (1) alter its maintenance award to a higher amount and of longer duration; (2) to include a \$400 accrued maintenance arrearage; (3) to alter its attorney fee award to reflect the same as a judgment rather than a contingency; and (4) to designate the parties' adult son's college tuition as a marital debt. Richard responded November 10, 2003 requesting the decree remain unaltered with the exception of his acknowledgement of a \$300 maintenance arrearage. A hearing on Valda's CR 59.05 motion was held December 23, 2003. The trial court overruled Valda's motion with respect to their son's college debt and her maintenance award, but sustained both the \$300 maintenance arrearage and the change in the attorney fee award status per order entered January 6, 2004. On February 4, 2004, Valda filed a notice of

appeal of the October 21, 2003 (decree) and January 6, 2004 (CR 59.05 motion) orders. Valda's sole issue in her appeal is that both the amount and duration of maintenance awarded by the trial court represented an abuse of discretion.

A trial court's decision regarding maintenance will not be reversed unless the trial court abused its discretion or based its decision on findings of fact that are clearly erroneous. Powell v. Powell, 107 S.W.3d 222, 224 (Ky. 2003). Before awarding maintenance to either party to a dissolution, the trial court must find that the party: (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. Gentry v. Gentry, 798 S.W.2d 928, 936-937 (Ky. 1990), (citing KRS 403.200(1)). The court is then required to consider the factors listed in KRS 403.200(2)(a)-(f) before ordering the amount and duration of maintenance. Gentry v. Gentry, 798 S.W.2d 928, 937 (Ky. 1990). Kentucky Revised Statute 403.200(2) states

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.

In its Findings of Fact, the trial court stated the following about the parties' status at the time of the final hearing:

[Valda] is a 46 year old, articulate and educated individual with no apparent physical reason that would adversely affect her employability. She worked at regular intervals during the marriage, taking time away from work when the parties' children were younger and in need of more parental attention. She is only one year short of educational studies needed to obtain a college degree in business. She recently started a new job in retail sales, working full-time for 37 hours weekly at ten dollars (\$10) per hour. This represents about nineteen thousand two hundred forty dollars (\$19,240) annual gross salary. She has applied for a position in management with the same employer. The one thousand three hundred dollar (\$1,300) Court ordered maintenance from [Richard] increases her annual income to about thirty-four thousand eight hundred forty dollars (\$34,840).

[Valda] asserts the need for five thousand dollars (\$5,000) monthly living expenses, including one thousand five hundred dollars (\$1,500) for the amount of the mortgage payment on the Breeland Avenue residence,¹ eight hundred dollars (\$800) groceries (the same amount earlier claimed when both children were in the home with [Valda]), three hundred dollars (\$300) for credit card use when she currently has no credit card, one hundred forty dollars (\$140) for household [items], two hundred fifty dollars (\$250) auto insurance for her and the parties' adult son, etc.

[Richard] has worked many years in retail. He currently earns an annual salary of seventy-two thousand dollars (\$72,000). He submitted evidence of monthly expenses exceeding five thousand dollars (\$5,000) as of August 2003. His take-home pay is just under five thousand dollars (\$5,000) per month. His expenses for day-to-day personal items and room and board amount to about one thousand six hundred dollars (\$1,600) monthly. He also pays health care and auto insurance for both parties, pays [Valda] one thousand two hundred dollars (\$1,200) in maintenance (now increased to one thousand three hundred dollars (\$1,300)) and approximately one thousand, one hundred thirty-one dollars (\$1,131) in monthly installments toward outstanding marital indebtedness, back taxes, and penalties for invading his retirement account to pay other marital obligations. [Richard] lives in a small, sparsely furnished, one bedroom apartment.

¹ At the time of the final hearing, the Breeland Avenue residence was facing foreclosure because no mortgage payments had been made by either party since August 2002. Richard ceased making voluntary mortgage payments when he was ordered to pay temporary maintenance to Valda. In August 2002, the parties had approximately \$30,000 equity in the home. The trial court found that Valda had dissipated the greater part, if not all, of the parties' equity in the property by the final hearing.

The trial court stated the following in its Conclusions of Law in relation to Valda's request for maintenance:

The Court may consider any temporary award of maintenance in determining whether maintenance should be awarded as a part of a final decree. The one thousand two hundred dollars (\$1,200) first set as temporary maintenance, coupled with [Valda's] present income from her new employment, represents about thirty-three thousand six-hundred thirty dollars (\$33,630) per year. This is a little less than half of [Richard's] income but [Richard] is responsible for satisfying the \$70,000 in marital debts and he has voluntarily given [Valda] his half of the equity in their marital residence. The Court concludes that [Richard] should continue paying maintenance to [Valda] but in the first set amount of \$1,200. Furthermore, the garnishment or wage assignment currently in place to deduct that amount automatically from [Richard's] salary should remain in effect. The Court also believes a date should be set to terminate maintenance because of the inconvenience required to schedule future reviews involving multi-state parties separated by such a great distance. The termination date will be subject to parties' rights to request any other appropriate action relative to termination, modification or continuation of maintenance. Considering her employable abilities, age, and nominal financial obligations, [Valda] should be able to support herself soon in a reasonable and comfortable manner without maintenance from [Richard]. The Court is not persuaded that we should assist in financing so high a standard of living that [Valda] and [Richard] are once again in financial straits due to expenses far exceeding earning resources.

The trial court then held that the maintenance payments would cease December 31, 2004, subject to appropriate requests for earlier termination, modification, or continuation.

The record shows the Jefferson Family Court considered all the statutory factors. The trial court considered the financial resources of Valda and Richard's ability to meet his needs while meeting Valda's needs. The trial court found that Valda could complete her college education in one year.² It further found that Valda was a 46 year old, articulate and educated individual with no apparent physical problems that would adversely affect her employability. The court acknowledged the duration of the parties' marriage in its Findings of Fact³ and further determined the parties had been living beyond their means for quite awhile. The trial court properly considered all factors of KRS 403.200(2) and the record in rendering its decision and thus did not abuse its discretion nor base its decision on findings of fact that are clearly erroneous.

Valda also asserts the trial court abused its discretion by considering the inconvenience of scheduling

² Valda testified to the same during cross-examination at the final hearing September 30, 2003.

³ The original decree had a typographical error stating the parties' year of marriage was 1987. This error was corrected by order dated February 21, 2005, to change the year of the parties' marriage to 1978.

reviews between multi-state parties in ruling on the maintenance issue. Valda contends that the trial court used this as a basis for terminating maintenance at one year. It would be problematic if the sole reason the trial court limited the duration of an award of maintenance was due to distance between the parties. However, there is ample additional support for the trial court's award of temporary maintenance contained in the decree discussed in the foregoing paragraphs. Further, the trial court specifically stated that the termination date would be subject to the parties' rights to request any other appropriate action relative to termination, modification, or continuation of maintenance. See also KRS 403.250(1). Therefore, we find no abuse of discretion in relation to this argument.

For the reasons set forth above, we believe the award of maintenance by the trial court does not reflect an abuse of discretion nor is based upon findings of fact that are clearly erroneous. Therefore, we affirm the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bryan Gowin
Louisville, Kentucky

BRIEF FOR APPELLEE:

Walker C. Cunningham, Jr.
Louisville, Kentucky