

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000433-MR

DANNY WAYNE DUNN

APPELLANT

APPEAL FROM MONTGOMERY CIRCUIT COURT
v. HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 03-CI-00155

PAULA DUNN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HENRY AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

VANMETER, JUDGE: This is an appeal from an order entered by the Montgomery Circuit Court in a dissolution proceeding. We disagree with appellant Danny Dunn's contention that the trial court erred by awarding \$300 per month permanent maintenance to appellee Paula Dunn. Hence, we affirm.

The parties married in 1974 and divorced in January 2004, by which time their children were adults. Tax records

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

indicate that Danny's adjusted gross income was \$56,829 in 2002, while Paula's was \$19,072. Danny filed an affidavit indicating that he had a net income of \$600 per week, and monthly expenses of \$2213.10. Paula asserted by affidavit that she had a gross income of \$1500 per month, and monthly expenses of \$1,609.46. Evidence also was adduced to show that Danny earned \$16.80 per hour, while Paula earned \$8.80 per hour.

After a videotaped hearing, the trial court entered a decree of dissolution, apportioned liability for the marital debts, directed Danny to pay Paula \$27,975 to equalize the division of marital property, and provided for the establishment of a Qualified Domestic Relations Order. Further, the court directed Danny to pay Paula \$300 per month as permanent maintenance. This appeal followed.

Danny contends on appeal that the trial court erred by failing to make the threshold findings required by KRS 403.200(1). That statute specifies that before a court may award maintenance, it must first find that the spouse who is seeking maintenance both:

- (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.

Here, although the trial court's order directed Danny to pay Paula \$300 per month as permanent maintenance, the order failed to address the KRS 403.200(1) threshold issues. Paula asserts that by failing to request the court to make additional findings,² Danny waived any objection to the sufficiency of those findings. However, it is well established that KRS 403.200(1) constitutes a statutory proceeding,³ the procedural requirements of which necessarily "prevail over any inconsistent procedures set forth in the Rules."⁴ Hence, Danny's failure to request specific findings of fact regarding the threshold issues did not prevent him from raising this issue on appeal.

Nevertheless, despite the absence of written findings, it is clear from the hearing videotape that the trial court complied with KRS 403.200(1) by making oral findings that Paula both lacked sufficient property to provide for her reasonable needs,⁵ and was unable to support herself through appropriate employment.⁶ Only after addressing these threshold issues did the trial court state, both on the videotape record and in its

² CR 52.01 and CR 52.04.

³ *Hollon v. Hollon*, 623 S.W.2d 898, 899 (Ky.1981).

⁴ CR 1(2).

⁵ KRS 403.200(a).

⁶ KRS 403.200(b).

subsequent order, that it would award Paula permanent maintenance. As KRS 403.200(1) does not specifically require the threshold findings to be made in writing, we conclude in these particular circumstances, where it is clear from the videotape that the trial court made oral findings in compliance with the statutory requirements, that the trial court did not violate KRS 403.200(1) when making the award of maintenance.

Further, we are not persuaded by Danny's contention that the trial court abused its discretion by awarding Paula permanent maintenance in the amount of \$300 per month. KRS 403.200(2) requires any award of maintenance to 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.

It is well established that the amount and duration of maintenance fall within the trial court's sound discretion.⁷ The trial court's findings may not be disturbed in the absence of an absolute abuse of that discretion.⁸

Here, although some conflicting evidence was presented, certainly there was sufficient evidence to support the court's oral findings regarding each party's financial resources and needs. Having carefully reviewed the record, we cannot say that the trial court abused its discretion by determining that Paula should be awarded permanent maintenance in the amount of \$300 per month.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kaye L. Leighton
Mt. Sterling, Kentucky

BRIEF FOR APPELLEE:

Leah Hawkins
Mt. Sterling, Kentucky

⁷ See, e.g., *Weldon v. Weldon*, 957 S.W.2d 283 (Ky.App. 1997); *Browning v. Browning*, 551 S.W.2d 823 (Ky.App. 1977).

⁸ *Clark v. Clark*, 782 S.W.2d 56, 60 (Ky.App. 1990).