

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000798-MR

KAREN S. BYRD

APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 02-CI-01319

DANIEL J. BYRD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; HENRY AND TACKETT, JUDGES.

HENRY, JUDGE: Karen Byrd appeals from a judgment of the Boone Circuit Court finding her solely responsible for credit card debts incurred while she was separated from, but still married to, Daniel Byrd. On review, we affirm.

Karen and Daniel were married on November 1, 1980, and the marriage produced two children. Daniel worked as a family resource teacher for the Covington Independent School District and Karen worked as executive secretary to the pastor at the Florence Baptist Church. Eventually, the marriage became

troubled to the point that reconciliation was not possible, but instead of immediately filing for divorce, the couple reached an agreement where they would continue to present themselves to the community as a happily married couple even though they considered themselves to be separated as of May 30, 1998. They both continued to live in the same home, although in separate parts, and they divided up the household bills in a manner suggested by Karen, with Daniel paying the first and second mortgage, along with health insurance for the children, and Karen paying all other expenses, including car insurance, the majority of groceries, and clothing and other items related to the children. Daniel was not required to make any child support payments per this agreement. The couple never reduced the agreement to writing, but they continued to live in this manner until, after filing for divorce on September 18, 2002, a decree of dissolution of marriage was entered on June 5, 2003.

During the course of the divorce proceedings, an issue of contention arose as to how to dispose of approximately \$36,000.00 in credit card debts incurred by Karen after May 1998. Karen argued that this amount should be considered "marital debt" because it was incurred primarily for food, clothing, and shelter items for her and the children. She also indicated that she did not have enough money to pay her share of the bills or the children's necessities and consequently had to

resort to credit cards to meet these expenses. Daniel disagreed with these contentions and argued that Karen should be held solely responsible for these debts because they were actually non-marital in nature.

On October 14, 2003, the trial court conducted a hearing on all contested issues, including the one noted above. The testimony before the trial court at this hearing revealed that the parties used a loan on their home equity line to pay off all existing credit card debt when they separated in May 1998 and major purchases made by the parties since that time, including appliances, automobiles, and improvements to the home. The testimony also indicated that Karen had approximately \$400.00 to \$450.00 left over each month after all of the bills and groceries for which she was responsible per the agreement were paid. Despite this fact, Karen sustained over \$36,000.00 in credit card debts after May 1998 on credit cards for which she was the sole signatory. A portion of this debt was incurred while Karen was on trips (unaccompanied by her children) in her capacity as a Boone County School Board member. Daniel testified that he had no knowledge of this debt or toward what expenses the credit cards were used until his attorney brought them to his attention. He also indicated that Karen never told him that she needed more money beyond what he had been giving her or that she had insufficient funds to pay her bills.

The trial court subsequently entered Supplemental Findings of Fact and Conclusions of Law on December 24, 2003, finding that the credit card debts incurred by Karen did not constitute marital debt for which the parties should be jointly responsible because Daniel had no knowledge of the debts and because Karen could not establish that the credit cards were used solely for marital purposes. Accordingly, it found her solely responsible for their payment. Karen's subsequent motion to alter, amend, or vacate the judgment was denied. This appeal followed.

The issues raised by Karen on appeal represent nothing more than a disagreement with the trial court's findings that the credit card debts were non-marital in nature. Our Supreme Court has held that "issues pertaining to the assignment of debts incurred during the marriage are reviewed under an abuse of discretion standard." Neidlinger v. Neidlinger, 52 S.W.3d 513, 523 (Ky. 2001). "Abuse of discretion in relation to the exercise of judicial power implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." Sherfey v. Sherfey, 74 S.W.3d 777, 783 (Ky.App. 2002), citing Kuprion v. Fitzgerald, 888 S.W.2d 679, 684 (Ky. 1994). (Internal quotations omitted). "The exercise of discretion must be legally sound." Id., citing Kuprion, 888 S.W.2d at 684.

As the trial court also noted, when a debt is incurred during a marriage, it is traditionally assigned on the basis of such factors as receipt of benefits and extent of participation; whether the debt was incurred to purchase assets designated as marital property; and whether the debt was necessary to provide for the maintenance and support of the family. Neidlinger, 52 S.W.3d at 523 (Citations omitted). As with marital property, courts need not presume that debts must be divided equally or in the same proportions as the marital property. Id. (Citations omitted).

Given these factors and the testimony set forth above, we simply cannot say that the trial court abused its discretion in deeming Karen responsible for all credit card debts. We particularly note that Daniel was completely unaware of the credit card debts and received none of their benefits, and that Karen never told him that she had insufficient funds to pay for her obligations per their agreement, which brings into question the necessity of the debts as to the maintenance and support of the family. The trial court reasonably could have concluded that these facts, along with the rest of the testimony given at the hearing, supported a finding that the debts should be considered non-marital in nature and apportioned to Karen.

Accordingly, the decision of the Boone Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

C. Ed Massey
Erlanger, Kentucky

BRIEF FOR APPELLEE:

Stephen D. Wolnitzek
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