

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000943-MR

MICHAEL LEE HORN

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE LARRY E. THOMPSON, JUDGE
ACTION NO. 03-CI-01155

KATHY LYNN (HARRIS) HORN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Michael Lee Horn appeals from the judgment of the Pike Circuit Court, following Findings of Fact, Conclusions of Law and Final Decree in divorce proceedings with his wife Kathy Horn, which awarded her temporary maintenance in the amount of \$400 per month for a period of fourteen years. The sole issue before this Court is whether the maintenance award was excessive based on the assets and income of the parties. We affirm.

The Horns were married in 1973, but after 30 years of marriage, the Appellee filed a petition for dissolution of marriage on July 30, 2003. The case was tried on February 5, 2004, with the court entering an Amended Findings of Fact, Conclusions of Law and Final Decree on April 9, 2004. Under the agreement, marital property was divided between the two parties with Michael receiving property with a value of \$28,450.00 and Kathy receiving property valued at \$22,400.00. In order to make this division equitable, the court then ordered Michael to pay Kathy \$6,050.00. Concerning their respective incomes, the court found that Appellant Michael had a net average monthly income of \$2,100.00 with monthly basic needs totaling \$1,080.00. Kathy was found to have a monthly income of \$840.00 with average monthly needs totaling \$1,390.00. Subsequently, the trial court found that after the division of the marital assets and taking Kathy's income and needs into account, she was unable to meet her basic needs. Therefore, the trial court also awarded Kathy temporary maintenance in the amount of \$400 dollars per month for a period of 14 years, or until Kathy remarries or cohabitates with another person or until either party becomes deceased.

Michael argues on appeal that the maintenance was excessive based on the income and assets of the parties and inappropriate under Kentucky Revised Statute (KRS) 403.200. He

claims that over the 14 year period, the amount of maintenance rises to the total of 67,200.00, which on its face is a windfall for the appellee. Additionally, the Appellant argues that the Appellee failed to establish proof that she would not improve her job earnings, thus failing to support the maintenance award, or that he himself would be able to continue to make the same wages that he presently makes. However, the Appellant does acknowledge that some maintenance is necessary, although Appellant puts the figure at three hundred dollars (\$300.00) per month for only five (5) years.

In domestic relations cases involving maintenance, the trial court is vested with wide latitude and discretion in determining the award. This determination will not be disturbed absent abuse of discretion by the trial court. Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990); Leitsch v. Leitsch, Ky. App., 839 S.W.2d 287 (1992). The award must be equitable and appropriate considering all of the statutorily proscribed factors, otherwise it will be deemed an abuse of discretion. Frost v. Frost, Ky. App., 581 S.W.2d 582 (1979); Atwood v. Atwood, Ky. App., 643 S.W.2d 263 (1982); Robinette v. Robinette, Ky. App., 736 S.W.2d 351 (1987).

The applicable statute regarding the awarding of maintenance is KRS 403.200(1)(a), which states that a trial court may award maintenance when it finds the spouse seeking

maintenance "lacks sufficient property, including marital property apportioned to him or her, to provide for his or her reasonable needs." As the record indicates, the court found that such a scenario existed in the present case. As stated earlier, Kathy was found to have a monthly income of \$840.00 with an average monthly need of \$1,390.00. Seeing as Kathy's monthly income falls well below her established monthly needs, as well as Michael's admission that maintenance is deserved, this initial question can be answered clearly that maintenance is appropriate.

KRS 403.200(2), provides:

- 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 appointed 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, 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.

Given that Kathy does not have a high school education, has had no vocational training and has no discernable skills with which to improve her job status, the likelihood of her increasing her monthly wages seems minuscule. Based upon this information as well as the Kathy's age, her previously established average monthly need (which was not challenged by the Appellant), and Michael's ability to meet his needs while meeting those of the Kathy, the conditions from the statute are easily met.

Michael makes \$2,100.00 per month with a monthly need of \$1,080.00, which leaves him with \$1,020.00 to spare. It was not an abuse of discretion, considering this figure, to award \$400 per month in maintenance. Finally, while Michael argues that Kathy has failed to give proof that he can continue to make that much money, Michael has likewise failed to offer any evidence that he will not be able to continue earning his salary.

Based on the evidence before the trial court, we conclude that the court did not abuse its discretion in reaching its decision as to the amount of the maintenance award. Therefore, the judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Sidney Trivette
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Michael de Bourbon
Pikeville, Kentucky