

RENDERED: SEPTEMBER 16, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

MODIFIED: SEPTEMBER 30, 2005; 10:00 A.M.

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001370-MR

RONALD G. HATTON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE PATRICIA M. SUMME, JUDGE  
ACTION NO. 03-CI-02187

DEBRA R. HATTON

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HENRY, TACKETT, AND VANMETER, JUDGES.

TACKETT, JUDGE: Ronald Hatton appeals from the judgment of the Kenton Circuit Court awarding his former spouse, Debra Hatton, \$250.00 per week in maintenance. Ronald argues the trial court abused its discretion in awarding maintenance, the length of the award is clearly erroneous, and the amount of the award is not supported by the evidence. We disagree and affirm the trial court's decision.

Ronald and Debra were married in 1977 and, after twenty-three years of marriage, they separated. Debra was forced to live with an adult son and his girlfriend because she was not making enough through her employment to be self-sufficient. After a three-year separation, Ronald filed for dissolution and, during the proceedings, Debra requested temporary maintenance. The trial court ordered \$250.00 per week in temporary maintenance and, when the decree of dissolution was entered, it contained an open-ended provision continuing the amount of maintenance previously ordered. Ronald appealed the trial court's decision, contending that Debra was not entitled to maintenance and, even if she were, the length and amount of the award were erroneous.

Kentucky Revised Statute (KRS) 403.200(1) requires a trial court to determine the following before awarding maintenance:

- (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
  - (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.

The trial court's decision to award maintenance is a matter of discretion and will not be overturned unless a clear abuse is shown. Detailed findings of fact were included in both the order awarding temporary maintenance and a separate set of findings of fact and conclusions of law entered at the same time as the decree of dissolution. The trial court, relying on proof that had been offered at a hearing, found that Ronald had dissipated marital assets. Ronald had substantial gambling winnings after the parties were separated, but prior to the dissolution action. He did not share the money with Debra and also failed to pay all of the taxes owed on his winnings such that, at the time of the divorce, he owed over thirty thousand dollars in back taxes and penalties. In addition, he withdrew \$43,838.00 from a joint pension plan. Debra was led to believe that the amount of distribution from the pension plan would only be \$20,000.00. She signed a release believing that she would receive \$5,000.00, their son would get \$4,000.00 and the remaining \$11,000.00 would go to pay taxes. In reality, Debra did get \$5,000.00, but Ronald spent the rest, including buying himself an additional vehicle for \$8,640.00 and \$6,000.00 lost due to gambling. Their son only received \$1,500.00 and none of the money went to pay taxes.

While Ronald concedes that Debra lacks any property with which to support herself, he argues that the trial court erroneously determined that she was unable to support herself through appropriate employment. The trial court found that Debra had a tenth grade education and was capable of working forty hours a week at her current job where she was paid \$7.75 an hour. Debra earned \$1,343.33 per month, lived with the parties' adult son and his girlfriend, and owned a car which was inoperable. Further, she had recently had surgery for hystoplasmosis, a condition which was causing her to lose her eyesight. Ronald, on the other hand, was able to earn \$54,000.00 per year and paid most of the household expenses for himself and girlfriend even though she was employed. Ronald's living expenses included money set aside for recreational gambling and a payment on a second vehicle. He points out that Debra survived without any money from him during their three-year separation; however, the trial court found that Debra had been unable to file for dissolution due to lack of funds and was incapable of paying for a place of her own to live. Moreover, as a result of the divorce, Debra would lose her insurance coverage and have to pay a \$240.00 per month COBRA fee for health insurance. Although Ronald contests the trial court's reliance on Debra's testimony alone to support her diagnosis of hystoplasmosis, no other evidence was needed to establish that

she had eye surgery and that she was losing her eyesight.

Ronald has failed to establish that the trial court's decision to award Debra maintenance was an abuse of discretion.

Even if the maintenance award is upheld, Ronald argues that the open-ended award was improper and the amount was not supported by the evidence. KRS 403.200(2) enumerates the following factors a trial court must consider in setting the amount and duration of a maintenance award:

- (2)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.

The trial court addressed each of those factors. The evidence established that Debra was forty-four years old at the time of the dissolution and had a tenth grade education. She was employed; however, she was unable to afford a home or apartment of her own. During the separation, Debra started working towards her GED. Prior to taking the test, she began suffering from hystoplasmosis and required surgery to stop the bleeding in her right eye. Her eyesight worsened to the point that she was unable to obtain her GED or to operate a car at night. Ronald, on the other hand, was in good health, had a managerial position with his company and paid most of his household bills even though he lived with a girlfriend who earned \$20,000.00 per year. Although not luxurious, the parties had enjoyed a comfortable lifestyle during their twenty-seven year marriage, including money for recreational gambling on the casino boats. Ronald admitted that his gambling worsened after separating from his wife. Due to Debra's age, education and physical condition with regard to her eyesight, the trial court did not envision that she would be able to improve her ability to earn money to support herself. The trial court also considered Ronald's dissipation of most of the marital assets, his gambling, expenses for an extra vehicle and employed live-in companion in determining that he could meet his own needs in addition to paying maintenance to his ex-wife.

Ronald argues that our decision in Richie v. Richie, 596 S.W.2d 32 (Ky. App. 1980), prevent a trial court from entering an open-ended maintenance award. We disagree. The Richie court held, under the specific facts presented in that case, the former wife was not entitled to an open-ended maintenance award, but it did not prohibit such awards altogether. Although KRS 403.200 favors limited awards which allow an unemployable spouse to acquire the necessary skills for self-sufficiency, "'in situations where the marriage was long term, the dependent spouse is near retirement age, the discrepancy in incomes is great, or the prospects for self-sufficiency appears dismal,' our courts have declined to follow that policy and have instead awarded maintenance for a longer period or in greater amounts." Powell v. Powell, 107 S.W.3d 222, 224 (Ky. 2003). In conclusion, the trial court's order was supported by the evidence before it and the open-ended maintenance award was not improper.

For the foregoing reasons, the judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

D. Anthony Brinker  
Covington, Kentucky

BRIEF FOR APPELLEE:

Laura Oldfield  
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