

RENDERED: APRIL 21, 2006; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court Of Appeals

NO. 2005-CA-000315-MR

WILLIAM B. JOHNSON

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT
HONORABLE JOHN W. McNEILL, III, JUDGE
ACTION NO. 04-CI-00127

PAMELA FAITH JOHNSON

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

KNOPF, JUDGE: William B. Johnson and Pamela Faith Johnson were married on June 23, 1996 and separated in September of 2002. No children were born of the marriage, and both parties had been married before. On May 11, 2004, William filed a petition for dissolution of the marriage. The trial court entered a dissolution decree on November 30, 2004, reserving for later adjudication the contested issues relating to property division

and maintenance. Thereafter, on January 5, 2005, the trial court entered an order restoring to the parties non-marital property, dividing the marital property, and directing William to pay maintenance to Pamela in the amount of \$850.00 per month for life. The trial court subsequently denied William's motion to alter, amend or vacate the judgment,¹ and this appeal followed. Finding no clear error or abuse of discretion, we affirm.

The only matter at issue in this appeal concerns the trial court's award of maintenance to Pamela. William argues that Pamela failed to prove that she is unable to provide for her reasonable needs with her income and the property awarded to her. He further argues that the trial court abused its discretion in both the amount and duration of the maintenance award.

KRS 403.200(1) requires a trial court to find that the spouse seeking maintenance (1) lacks sufficient property, including marital property apportioned to her, to provide for her reasonable needs; and (2) is unable to support herself through appropriate employment. William argues that there was no substantial evidence to support either finding. To the contrary, he notes that the trial court apportioned substantial marital and non-marital property to Pamela as part of the

¹ CR 59.05,

property division. In addition, William contends that there was no evidence to support a conclusion that Pamela's income is insufficient to meet her reasonable needs.

As part of the property division, the trial court restored Pamela's non-marital duplex in Mt. Sterling, which has an unencumbered equity of \$18,000.00. In addition, the trial court awarded Pamela \$153,089.00, representing half of the marital estate. That amount included \$61,725.00 from William's retirement account and \$51,528.50 in proceeds from the settlement of William's personal-injury claim. William contends that the property apportioned to her should be sufficient to meet her reasonable needs.

Likewise, William argues that the trial court erred in finding that Pamela is unable to support herself through appropriate employment. Prior to the marriage, Pamela was employed as a hairdresser, earning \$1,300.00 - \$1,500.00 per month. But shortly after the marriage, Pamela was stopped working when she was diagnosed with rheumatoid arthritis. Pamela testified that she receives \$542.00 per month in social security disability and \$510.00 per month in rent from her duplex. She testified that she is currently unable to make her mortgage payment on the duplex, and that she was unable to afford health insurance. She also testified that she has been receiving food stamps and assistance from members of her church.

Pamela did not testify concerning her specific monthly expenses. However, prior to trial she submitted an affidavit listing her claimed monthly expenses. At that time, she stated that her monthly mortgage payment and homeowners insurance was \$799.00, and she claimed other expenses totaling about \$940.00.

The decision to grant or deny a maintenance award lies within a trial court's sound discretion as it applies the governing factors of KRS 403.200 to the parties' circumstances upon dissolution of marriage.² Apparently, the trial court accepted Pamela's affidavit setting out her monthly expenses. Pamela's disability income and income from her non-marital property were clearly insufficient to meet those stated expenses. And while Pamela received a significant award of marital property, there was no evidence that those assets currently produce income. Consequently, the trial court did not clearly err by finding that Pamela's income from all sources is insufficient to meet her reasonable needs.

William also contends that the trial court abused its discretion by awarding open-ended maintenance to Pamela. In determining the amount and duration of maintenance, the court must consider the factors set out in KRS 402.200(2). Our standard of review regarding an award of maintenance is that of

² Leveridge v. Leveridge, 997 S.W.2d 1, 2 (Ky. 1999).

abuse of discretion. In particular, the amount and duration of maintenance are within the sound discretion of the trial court.³ As an appellate court, this Court is not authorized to substitute its own judgment for that of the trial court on the weight of the evidence where the trial court's decision is supported by substantial evidence.⁴

William focuses on the fact that the marriage was of comparatively short duration. The parties were married for eight years and they resided together for only six. Nonetheless, the duration of the marriage is only one factor for the trial court to consider, and maintenance may properly be awarded even following short-term marriages.⁵ As previously noted, the marital property apportioned to Pamela is insufficient to meet her reasonable needs without depleting those assets entirely. Pamela's testimony about her disability was undisputed and there was no evidence that she is otherwise employable. The evidence at trial established that the parties

³ Gentry v. Gentry, 798 S.W.2d 928, 937 (Ky. 1990); Combs v. Combs, 622 S.W.2d 679, 680 (Ky. App. 1981), *citing* KRS 403.200(2), Browning v. Browning, 551 S.W.2d 823 (Ky.App. 1977), and Russell v. Russell, 878 S.W.2d 24, 26 (Ky.App. 1994).

⁴ Leveridge, *supra* at 2.

⁵ See Van Bussum v. Van Bussum, 728 S.W.2d 538 (Ky.App. 1987) (maintenance award appropriate after six-year marriage); and Carter v. Carter, 656 S.W.2d 257 (Ky.App. 1983) (maintenance award may be appropriate even after a two-year marriage).

maintained a comfortable lifestyle during the marriage. And finally, William does not assert that the \$850.00 per month maintenance payment would leave him unable to meet his reasonable needs. Although the evidence may have supported a maintenance award for a shorter duration, we are unable to say that the trial court's award of maintenance in this case constituted an abuse of discretion.

Accordingly, the judgment of the Mason Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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