

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001861-MR

MATTHEW GOATEE

APPELLANT

v.

APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 03-CI-00313

BESSIE GOATEE

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: CAPERTON, VANMETER JUDGES. KNOPF, □ SENIOR JUDGE.

CAPERTON, JUDGE: Matthew Goatee (Matthew) appeals an order of the Ohio Circuit Court which granted an award of maintenance to Bessie Goatee (Bessie). After careful review, we vacate and remand to the circuit court on the issue of maintenance.

The Goatees were granted a final decree of dissolution of marriage in August 2005. In that decree, the Ohio Circuit Court adopted the domestic relations commissioner's (DRC) recommended order from July 2004 and incorporated the circuit court's order of September 2004. The order of September 2004 adopted the DRC's recommended order which set maintenance at

\$300 per month and overruled Matthew's exceptions and objections. It is from this decree awarding maintenance that Matthew appeals.

Matthew claims that the award of maintenance is an abuse of discretion and clear error because the circuit court failed to make factual findings about the parties' reasonable monthly expenses and the ability of Matthew to pay as required by KRS 403.200.

In maintenance awards the trial court is afforded a wide range of discretion, which is reviewed under an abuse of discretion standard. See *Platt v. Platt*, 728 S.W.2d 542, 543 (Ky.App. 1987). Abuse of discretion implies arbitrary or capricious action or at least an unreasonable and unfair decision. See *Sherfey v. Sherfey*, 74 S.W.3d 777, 783 (Ky. App. 2002).

KRS 403.200(1)(a) and (b) set out the required findings for an award of maintenance. "There must be a finding that the spouse seeking maintenance lacks sufficient property, including marital property, to provide for his reasonable needs; second, that spouse must be unable to support himself through appropriate employment according to the standard of living established during the marriage." *Drake v. Drake*, 721 S.W.2d 728, 730 (Ky.App. 1986). These specific findings are required so that the appellate court can determine the propriety of the award. See *Qualls v. Qualls*, 384 S.W.2d 326 (Ky. 1964). In addition to the statutorily required specific findings, the

trial court is required to consider the statutory factors in KRS 403.200(2). See *Gomez v. Gomez*, 168 S.W.3d 51 (Ky.App. 2005).

The record indicates that the circuit court did issue its findings of fact and conclusions of law. However, the circuit court did not specifically make the statutorily required findings. Courts speak through their written, signed, and entered orders. See *Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313 (Ky. 1968). Without these required findings in the written record, the circuit court's decree cannot be upheld.

Matthew also argues that the method by which the DRC set the maintenance award is problematic. The DRC used an AOC computer program to determine the amount of maintenance. Appellant contends that this program violates KRS 403.200. With the record void of the required findings and considerations, we will not address the validity of the computer program at this time.

Absent the specific findings required in KRS 403.200(a) and (b) and without the record reflecting whether the statutory factors were considered, this Court remands "to the circuit court for reconsideration of whether maintenance should be awarded in light of such statutorily required finding(s)." *Cochran v. Cochran*, 746 S.W.2d 568, 570 (Ky.App. 1988).

For the foregoing reasons, the Ohio Circuit Court decree is vacated as to the maintenance award and the case is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Evan Taylor
Owensboro, Kentucky