

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-002087-MR

RICK LEE PIPPIN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOSEPH W. O'REILLY, JUDGE
ACTION NO. 99-FC-001684

MICHELLE LENE PIPPIN AND
VICTORIA ANN OGDEN

APPELLEES

OPINION
AFFIRMING IN PART,
VACATING IN PART,
AND REMANDING

** ** *

BEFORE: ABRAMSON, ACREE, AND WINE, JUDGES.

ABRAMSON, JUDGE: Rick Pippin appeals from several May 20, 2005 and September 8, 2005 orders of the Jefferson Family Court addressing issues arising in the aftermath of Rick's 2002 divorce from Michelle Pippin. Rick challenges rulings requiring him to pay child support and spousal maintenance, assigning a tax liability entirely to him, ordering him to pay Michelle a portion of property insurance proceeds, ordering him to pay her for

some furniture she was awarded in the 2002 decree but which he ended up receiving, and awarding Michelle a portion of her attorney fees.¹ With the exception of Michelle's claim for maintenance arrearages, which requires vacation of that portion of the court's order and a remand for additional factual findings, we are convinced that the trial court addressed the parties' claims based on sufficient evidence and sound discretion.

Accordingly, with the one exception, we affirm.

The parties married in June 1975, and their union produced six children, the eldest born in August 1978 and the youngest in October 1992. During the marriage the parties acquired and successfully managed car wash businesses and acquired investment assets that included interests in oil and gas leases; a BP filling station; and Pippin Ridgeway LLC, which apparently acquires and leases commercial realty. Income from the car washes and their other investments afforded the Pippins a comfortable lifestyle. They vacationed regularly; provided their children with parochial school educations; and lived in a large, comfortably furnished home, worth, according to Rick, some \$1.5 million. The parties separated in January 1999. In March of that year Michelle petitioned for dissolution, and the matter was eventually tried by an arbitrator in January 2002. Pursuant to the arbitration agreement, the trial court adopted the arbitrator's findings as its decree, which was entered April 23, 2002.

¹ The "statement of the case" portion of Rick's brief complains of the trial court's refusal to hold Michelle in contempt for a visitation violation and of its order requiring Rick to provide health insurance for the children. Neither of these issues is pursued in the "argument" section of his brief, however, so we shall deem them waived and shall not otherwise address them.

Because the parties had recently sold one of their car washes and planned to sell the other--the major sources of marital income--the arbitrator was obliged to estimate, for child support and maintenance purposes, their likely post-dissolution earnings. Noting that Michelle's schooling had ceased with high school and that she had devoted the nearly twenty-six years of the marriage to raising the parties' children, he imputed to her the ability to earn income at the rate of \$1,500.00 per month (\$9.00 per hour) and found that she was apt to receive another \$1,200.00 per month from her share of the parties' other assets, including half of the \$1,543.00 monthly payment they were to receive for a time as part of the already completed car wash sale. This income, even in light of the substantial proceeds Michelle would eventually receive from the sale of the two car washes, was not sufficient, the arbitrator found, to meet her reasonable expenses.

Although Rick, too, had no formal education beyond high school, the arbitrator found that his experience during the early years of the marriage as an employee of Frito-Lay and his business experience managing the car washes made it likely that he would continue to earn a substantial income and so imputed to him the ability to earn at the rate of \$5,000.00 per month, supplemented, as was Michelle's income, by \$1,200.00 per month from his share of the parties' assets. Based on these estimated incomes, the Kentucky Child Support Guidelines, the standard of living the parties had enjoyed during the marriage, and the expenses Michelle would incur providing the children's primary residence, the arbitrator made, among others, these three rulings: He awarded Michelle child support in the amount of \$1,384.00 per month until the second child graduated from

high school (the oldest child was already an adult), at which time the award would decrease to \$1,268.00 per month. He ordered Rick to procure health insurance for the children, with the cost to be divided in proportion to the parties' incomes, and he awarded Michelle maintenance of \$650.00 per month. The child support and maintenance awards were made effective as of January 2002.

Almost immediately disputes arose. The parties had agreed to sell their residence, and the decree envisioned that the parties would pay a long list of credit card and other debts from their homeowners' equity. As it happened, Rick purchased the allegedly \$1.5 million residence at a foreclosure sale on the day the decree was entered for the principal mortgage amount of about \$753,000.00 plus various other liens on the property bringing the total cost to about \$802,000.00. By virtue of this sale, Rick in effect appropriated whatever equity there was. This sale necessitated a new plan for paying the debts. Rick also refused to make the ordered child support payments, eventually necessitating criminal proceedings to compel them; he refused to procure health insurance coverage for his children, necessitating Michelle's resort to Passport, a public assistance health-insurance program; and he refused to pay Michelle her \$1,400.00 share of insurance proceeds for vandalism to one of their vehicles and about \$990.00 for one child's furniture, which the decree awarded to Michelle but which ended up with Rick when the child decided to live with him. Michelle sought relief from all of these alleged violations of departures from the 2002 decree.

Other disputes followed. Michelle alleged that Rick was not making maintenance payments and that his misapplication of insurance proceeds had resulted in her being wrongfully charged about \$4,500.00 for repair work on the former marital residence. She eventually moved for increases in child support and maintenance and moved to have Rick compelled to contribute his proportionate share to the children's parochial school educations. Rick countered by moving for termination of Michelle's maintenance, for a reduction in child support, and for the assignment of a portion of a \$36,000.00 car wash related tax bill to Michelle.

Following hearings in February and September 2004, the trial court entered a series of orders on May 20 and September 8, 2005 attempting to address this barrage of post-dissolution litigation. The court held Rick in contempt for his violations of the decree's child support, maintenance, and health insurance provisions. The court did not impose sanctions, as it might have done, but did order Rick to make prompt arrangements for health insurance and otherwise ordered him to comply with his obligations in a timely manner. If, at the end of the year Rick was not current with his child support payments, the trial court ruled that Michelle would be entitled to list the children as dependents for income tax purposes.

The court noted that since the 2002 decree Michelle had obtained her real estate agent's license, but that she had yet to earn any commissions. The court thus continued to impute to her earned income of about \$1,500.00 per month and income from all sources, including maintenance of \$3,333.00 per month. Her reasonable monthly

expenses, the court found, continued to be \$5,500.00 per month. The court also noted that since the decree a male companion had moved in with Michelle and that this man contributed \$1,164.00 per month to the household, although much of this contribution would be dedicated to his own expenses. To account for the man's contribution, however, the court reduced Michelle's expenses to \$4,500.00 per month, and so found a shortfall between Michelle's monthly income and expenses of about \$1,200.00.

The court also noted that in May 2004 Rick had successfully applied for a consumer loan from Irwin Union Bank and had represented on the loan application that his monthly income was \$10,499.00. The court accepted this representation as a more accurate reflection of Rick's income than the \$6,200.00 per month imputed to him under the decree. The trial court found that Rick's reasonable expenses, like Michelle's, were \$5,500.00 per month, and, also like Michelle's, that they had been offset, by at least \$1,000.00 per month, by contributions from the female companion who had moved in with Rick. Accordingly, the court found that Rick enjoyed surplus income of about \$6,000.00 per month, and also found that the parties' financial circumstances had substantially changed since the April 2002 decree.

Based on these findings and the child support guidelines, the court increased Rick's share of child-support related expenses, including health insurance, to 76 percent, and adjusted his child support obligation to \$1,674.00 per month. The court also ordered Rick to pay a like percentage of the children's parochial school tuition through high school. The court found that the parties' choice of parochial education

throughout the long marriage made it reasonable to continue that choice in its aftermath. The court increased Michelle's maintenance award to \$1,500.00 per month. The court further agreed with Michelle that she was entitled to be reimbursed for her share of property insurance proceeds and for the one child's furniture that had remained with Rick. It ruled that the \$36,341.00 delinquent state and local tax liability for one of the car washes was entirely Rick's responsibility, noting that the tax had been allowed to accumulate for several years, during which Rick had had sole control of the pertinent information. Finally, noting the substantial difference in the parties' incomes, the court ordered Rick to pay \$1,830.00 toward Michelle's attorney fees. Rick challenges virtually all of these awards and findings, but directs the brunt of his attack against the court's maintenance and child support awards. It is to those awards, therefore, that we turn first.

Under KRS 403.200, the trial court may grant maintenance 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." As our Supreme Court has observed,

[u]nder this statute, the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts. In order to reverse the trial court's decision, a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion.

Perrine v. Christine, 833 S.W.2d 825, 826 (Ky. 1992). KRS 403.200(2) further provides that maintenance orders

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 h[er], and h[er] ability to meet h[er] 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.

Although one of the important principles underlying KRS 403.200 is that divorced spouses should, if possible, resume their independence, our Supreme Court has recently explained that that principle must sometimes yield to other considerations:

KRS 403.200 seeks to enable the unemployable spouse to acquire the skills necessary to support himself or herself in the current workforce so that he or she does not rely upon the maintenance of the working spouse indefinitely. . . . However, 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 appear[] 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) (citations and internal quotation marks omitted). It is appropriate, moreover, in determining the amount and duration of maintenance, for the trial court to consider the standard of living enjoyed during the

marriage. *Id.* Again, this Court may disturb the amount and duration of the trial court's award only if "the trial court abused its discretion or based its decision on findings of fact that are clearly erroneous." *Powell v. Powell*, 107 S.W.3d at 224.

Finally, KRS 403.250(1) provides that the trial court may modify a maintenance award if, and only if, it finds "changed circumstances so substantial and continuing as to make the terms [of the prior award] unconscionable." And under KRS 403.250(2) unless the parties' written agreement or the decree itself provides otherwise, "the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance."

In this case, the arbitrator and the trial court have determined that notwithstanding Michelle's receipt of substantial marital property--her share of the car washes, in particular, and of Pippin Ridgeway LLC, the combined pre-tax value of which approaches or exceeds, it appears, one million dollars--that property does not provide for Michelle's reasonable needs and otherwise she is unable to support herself through appropriate employment. We cannot say that these determinations are clearly erroneous. The record indicates that Michelle was obliged to consume much of her share of the proceeds from the car washes to provide a suitable residence for herself and the children, and that all of her other sources of income, including that from employment and from Pippin Ridgeway, leave her unable to maintain the housing, savings, and educational standards enjoyed during the marriage.

Rick argues that the trial court erred by failing to include in Michelle's income the capital gains she reported on her income taxes following the sale of one of the car washes. Clearly, however, for maintenance and child support purposes the court should identify continuing sources of income, not income, such as this isolated instance of capital gains, that will not be available in the future. The trial court did not err by disregarding the car wash capital gains when it calculated Michelle's reasonably anticipated income.

Rick also argues that the trial court erred by not reconsidering Michelle's maintenance award in light of the fact that in June 2005 she sold her interest in Pippin Ridgeway LLC to Rick for about \$650,000.00. The trial court implicitly denied Rick's motion for yet another hearing on maintenance and noted in one of its September 8, 2005, orders that this sale did not amount to a change in circumstances that would justify altering or terminating Michelle's maintenance. We agree with the trial court. The sale did not add to Michelle's assets or income; it merely changed the form of an asset the trial court had already taken into consideration. There was no need for another hearing for the trial court to conclude that Michelle's sale of her interest in Pippin Ridgeway LLC did not constitute a change of circumstances that would justify a modification of her maintenance award.

Rick's primary contention is that Michelle's cohabitation with her male companion is so significant a change of circumstances as to render Michelle's maintenance award unconscionable. In accord with KRS 403.250(2), the April 2002

decree provides that Michelle's maintenance is to continue "until the death of either party, the remarriage of Petitioner [Michelle] or until further order of the Court." The trial court's subsequent orders did not alter this aspect of the decree's maintenance award. As Rick concedes, our Supreme Court has held that KRS 403.250(2) effectively distinguishes between post-divorce cohabitation and remarriage. Whereas under that section of the statute remarriage generally terminates maintenance, cohabitation by itself is not grounds for automatic termination. Under KRS 403.250(1), however, "a maintenance recipient's cohabitation can render continued maintenance 'unconscionable' if the nature of the cohabitation constitutes a new 'financial resource' as contemplated in KRS 403.200(2)(a)." *Combs v. Combs*, 787 S.W.2d 260, 262 (Ky. 1990). In *Combs*, our Supreme Court identified several factors trial courts should consider when assessing whether a maintenance recipient's cohabitation justifies modifying or terminating the maintenance award. Among those factors, as the trial court noted, is economic benefit:

The relationship must be such to place the cohabitating spouse in a position which avails that spouse of a substantial economic benefit. The scope and extent of the economic benefit should be closely scrutinized. If the "cohabitation" does not change the cohabitating spouse's economic position, then reductions should not be permitted.

Id. at 262.

The trial court found that Michelle's cohabitation did not provide a substantial economic benefit that changed her economic position, and this finding is not clearly erroneous. The record indicates that Michelle's companion contributes less than

\$1,200.00 per month to the household, and that even allowing for his contribution, as the trial court did, Michelle's income is still far less than her reasonable expenses. We cannot say, therefore, that the trial court either clearly erred or abused its discretion by refusing to modify Michelle's maintenance on this ground.

Finally with respect to maintenance, Rick contends that from January 2002, when under the decree the original maintenance order took effect, until September 2004, when he admits to have ceased making maintenance payments, he paid Michelle \$7,745.50 more than the maintenance award obliged him to. He seeks to recover the alleged overpayment and contends that the trial court erred when, instead of awarding to Rick the alleged overpayment, it awarded maintenance arrearages to Michelle.

It appears that in the summer of 2001 the parties sold one of the car washes to J. Patrick Mayhall. They agreed to allow Mr. Mayhall to make monthly installment payments of \$1,543.00 for about three years, at which time the outstanding balance would come due. Mr. Mayhall made the first installment payment in August 2001, and there is apparently no dispute that with one exception Michelle received each of the Mayhall payments until they ceased in about September 2004. Rick contends that Michelle's receipt of his \$771.50 half of these payments more than satisfied her \$650.00 per month maintenance award, and that he is entitled to recover his full half of the payments made during 2001, before the maintenance award went into effect, and the \$121.50 excess each month after the award took effect.

Unfortunately, with respect to this issue the record is anything but clear. In one of its May 23, 2005 orders, the court ruled that

[t]he receipt of 100% of the Mayhall monthly payments by the petitioner [Michelle] was a result of a non-wage garnishment. Petitioner is entitled to a common law judgment against the Respondent at the rate of \$650.00 per month for unpaid maintenance. Respondent is entitled to a credit for all maintenance payments made. He is not entitled to a credit for sums collected through the efforts of the Petitioner for amounts other than maintenance. He is also entitled to a credit for the \$6,898.00 owed him by the Petitioner to equalize the division of the marital estate. Interest shall run at the rate of 12% per annum from the date of the judgment until paid.

Certainly, if Michelle was receiving the Mayhall payments in satisfaction of another debt Rick owed to her, then those payments cannot also satisfy Rick's maintenance obligation. Neither the trial court nor Michelle, however, has identified another debt, nor have they explained on the basis of what order the non-wage garnishment was issued. Prior to the decree, in December 1999, the trial court issued pendente lite child support and maintenance orders which did not fix specific amounts for temporary support and maintenance but required Rick to make available to Michelle and the children sufficient funds for the ordinary functioning of their household. Michelle alleges that Rick did not abide by that order and that she was obliged to resort to credit card debt to meet her family's expenses. Even absent some other obligation, it is reasonable to assume that Michelle received Rick's half of the 2001 Mayhall payments in furtherance of the pendente lite support and maintenance orders. Rick, therefore, is not entitled to recover any portion of the August through December 2001 Mayhall payments.

The pendente lite orders were superseded by the decree, however, effective as of January 2002, and the arbitrator expressly declined to award any arrearages for Rick's alleged non-compliance with them. The arbitrator apparently anticipated that marital equity from the sale of the parties' residence could be used to pay Michelle's credit card debts, which payment would render the temporary support issues moot. As noted above, that plan fell through when the sale of the residence yielded no equity. Nevertheless, as of January 2002, Rick's obligations were fixed by the decree, and, absent some showing of a prior obligation that was not superseded by the decree, Rick is correct that his half of the post-January 2002 Mayhall payments more than satisfied his \$650.00 per month maintenance obligation. The Mayhall payments ceased in September 2004, and Rick concedes that he has made no maintenance payment since then, insisting that Michelle's cohabitation relieves him of that obligation. Rick's refusal to make the ordered payments is in violation of the decree and the trial court's May and September 2005 orders, for even if Michelle's cohabitation entitled Rick to relief, our Supreme Court held in *Combs v. Combs*, 787 S.W.2d at 263, that the maintenance obligation continues until entry of an order modifying it; the obligor is not authorized to cease making payments in anticipation of modification.

The bottom line is that we must vacate this portion of the trial court's order and remand this issue to the trial court. Michelle should be afforded an opportunity to show that she received Rick's post-December 2001 Mayhall payments in satisfaction of some viable obligation other than her maintenance award. If she did, then Rick is entitled

to no maintenance credit for those payments. Michelle should be given a judgment for a specified amount of maintenance arrearages, and the trial court should indicate how that amount was calculated. If Michelle was receiving Rick's share of the post-December 2001 Mayhall payments in satisfaction of her maintenance award, however, then the trial court must decide how to account for the difference between the \$771.50 payment and the \$650.00 debt. The court could award the difference to Rick; it could apply the difference to any arrearages Rick owes; or it could simply award the difference to Michelle as a sanction for Rick's admitted violation of the maintenance order. We regret the need for additional proceedings on this issue but find it necessary to remand.

Next, Rick contends that he has been ordered to pay too much child support. To the extent that this contention is based on the trial court's alleged failure to take into account Michelle's capital gains income or the sale of her interest in Pippin Ridgeway LLC, we reject it for the reasons discussed above with respect to maintenance. Michelle does not have a steady source of capital gains, and the sale did not add to her assets, but merely exchanged one for another.

Rick's contention is also based on the court's order requiring him to pay his proportionate share of the children's parochial school tuitions. Rick characterizes this order as a deviation from the child support guidelines and one not authorized absent an express agreement between the parties to divide the tuitions. As Rick correctly notes, the child support guidelines set out in KRS 403.212 provide presumptively appropriate amounts of child support, and trial courts may not deviate from the guidelines without

making an express finding that their application would result in an unjust or inappropriate award. *Downing v. Downing*, 45 S.W.3d 449 (Ky. 2001). This Court reviews child support awards for abuse of the trial court's statutorily circumscribed discretion. *Id.*

In support of his position, Rick relies on *Giacalone v. Giacalone*, 876 S.W.2d 616 (Ky.App. 1994), but his reliance is misplaced. In *Giacalone*, this Court held that divorcing spouses could agree to permit reopening of a child support order on grounds, such as increased parochial school tuition, that would not otherwise justify reopening under KRS 403.213(1). Having determined that the parties' agreement permitted reopening in that case, the Court then ruled that deviation from the guidelines to provide for parochial school tuition was justified under KRS 403.211(3)(f) or (g), because the parties' history of sending their children to parochial school either implied an agreement to provide that sort of education or gave rise to an extraordinary educational need.

In this case, the trial court did not rely on the parties' agreement to justify reopening the child support award. It relied rather on the fact that Rick's income had proved substantially greater than that imputed to him at the time of the decree, an increase that amounted to a presumptively material change in circumstances under KRS 403.213(2). Once the child support award was reopened, the trial court was obliged to consider anew the needs of the children, and we cannot say the trial court abused its discretion by deviating from the guidelines to provide them with parochial school tuitions. The deviation is not beyond the parties' means, and, as in *Giacalone*, it was

justified under either KRS 403.211(3)(f) or (g). During the twenty-six year marriage the parties had consistently chosen parochial school education, implying an agreed preference for parochial schools. Parochial school education had also become a standard of the marriage, which the trial court could reasonably deem important for the children to maintain. Rick is not entitled to relief, therefore, from the May 23, 2005 child support award increasing his proportionate share of that obligation and deviating from the guidelines to provide parochial school tuitions.

Rick next contends that the trial court erred and abused its discretion by assigning to him the entire liability for some \$36,341.00 in delinquent state and local taxes owed by one of the car washes. Rick maintains that this liability should be divided equally. As he correctly notes, in *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001), our Supreme Court explained that absent a statute to the contrary there is no presumption that debts incurred during marriage are marital, that debts incurred after separation are nonmarital, or that marital debts should be divided equally between divorcing spouses.

The *Neidlinger* Court noted that

[d]ebts incurred during marriage are 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. . . . Another factor, of course, is the economic circumstances of the parties bearing on their respective abilities to assume the indebtedness.

Id. at 523 (citations omitted). As with the maintenance and support issues discussed above, this Court reviews “issues pertaining to the assignment of debts incurred during the marriage . . . under an abuse of discretion standard.” *Id.* at 523.

Again, we cannot say that the trial court abused its discretion. The trial court noted that while these taxes were accumulating, Rick had control of the car wash and so should have known that the taxes were due. Clearly, therefore, he may be held responsible for any portion of the tax liability attributable to interest or penalties. *Cf. Dobson v. Dobson*, 159 S.W.3d 335 (Ky.App. 2004) (noting that result in other jurisdictions). Under *Neidlinger*, moreover, it was not an abuse of discretion to assign to Rick the principal liability as well. Rick received a windfall well in excess of this tax bill when he was able to purchase the marital residence without having to share the equity with Michelle. For that reason, and in light of Rick’s disclosures in his Irwin Union Bank loan application, where in addition to his nearly \$10,500.00 per month income he claimed personal assets worth more than two million dollars, he may reasonably be deemed the party with the greater ability to assume this liability.

Before the decree was entered, one of the parties’ vehicles was vandalized and their residence was damaged by lightning. Insurance proceeds were paid to Rick: about \$2,800.00 for the damage to the car and more than \$20,000.00 for the lightning damage. Stipulations incorporated in the decree provided that the parties would divide the car insurance proceeds evenly. Instead of doing so, however, Rick claims that he deposited the car insurance money into a joint account which was used for marital

purposes. Michelle moved to have the decree enforced, and the trial court ordered Rick to give her the \$1,400.00. Rick contends that the trial court erred by not giving him credit for the alleged joint deposit. The trial court did not err. The decree contemplated that Michelle would be handed her share of the car insurance proceeds, not that Rick would take it upon himself to decide how her share would be used. Even if Rick deposited the insurance proceeds as he alleges, his failure to abide by the decree justifies the trial court's ruling.

Rick also took control of the house insurance proceeds and failed to pay one of the repair services, a company called Purofirst. Apparently Michelle had hired Purofirst, and when it was not paid it attached a \$4,571.33 lien to Michelle's interest in one of the car washes. When the car wash was sold, the Purofirst debt was collected from Michelle's portion of the sales proceeds. She later moved to recover the \$4,571.33 on the grounds that Rick had misapplied the insurance proceeds and that as purchaser of the residence he should be responsible for the repair. The trial court agreed with Michelle and ordered Rick to pay her the amount of the Purofirst debt. Rick again contends that he deposited the insurance proceeds in a marital account, and he observes that the trial court mistakenly described the Purofirst lien as having attached to the residence rather than the car wash. The court erred, he contends, by not giving him credit for the joint deposit and by opining that the Purofirst lien was one of the residence liens Rick assumed when he purchased the residence.

At the hearing on Michelle's motion, she presented evidence tending to show that Rick had indeed initially deposited the house insurance check in a joint account, but that almost immediately thereafter had withdrawn \$20,000.00 from that account and placed it in an account he controlled. This evidence adequately supports the trial court's finding that not only did Rick fail to apply the insurance proceeds to the Purofirst debt, but also that he did not apply them to any other marital expense. Moreover, the trial court's mistake regarding the property to which Purofirst's lien attached was not material. While the Purofirst lien did not attach to the residence, clearly the debt was for the benefit of the residence, and because Rick has obtained that benefit the trial court did not abuse its discretion by assigning the debt to him.

Shortly after Rick's foreclosure purchase of the marital residence, Rick apparently had Michelle and the children evicted. In the turmoil of the eviction, one of the children sought to remain in the residence and to live with Rick. Michelle acceded to the child's wish and so did not remove the child's furniture, furniture the decree awarded to Michelle. Michelle later moved to recover the stipulated value of that furniture, about \$990.00. Rick contends that the trial court erred by granting Michelle's motion. He maintains, apparently, that, by agreeing to permit the child to stay with Rick, Michelle also agreed to give Rick the child's furniture. Michelle's testimony was to the contrary. The trial court did not clearly err by finding that Michelle had neither implicitly nor explicitly agreed to give Rick the furniture, and thus its award to Michelle of the furniture's value was not an abuse of discretion.

Rick complains about the trial court's contempt findings, but as our discussion to this point has made clear, Rick has repeatedly disregarded the court's orders and awards and has taken into his own hands matters over which the court has control. There is no dispute that Rick resisted the decree's child support award until criminal proceedings were initiated to compel his compliance, and Rick acknowledges that he disregarded the decree's provision regarding health insurance even after Michelle had resorted to public assistance. Although Rick asserts that the record reflects no proof in support of the trial court's finding that he failed to provide Michelle with an accounting of the Atlas and Viking oil lease payments, the court's contempt finding is apparently based on a hearing held January 31, 2003, which, absent citation to the record showing otherwise, we must presume supports the trial court. We may note, moreover, that Rick does not deny the violation. Whether, finally, Rick initially violated the decree's maintenance provision has become a moot point given his admitted violation once the Mayhall car wash payments ceased. These patently contemptuous violations more than justify the trial court's contempt findings. Divorces are often bitter, of course, and divorcing spouses are frequently loath to make even the smallest concessions to one another, but divorce does not justify contempt of court. If Rick continues his practice of disregarding or otherwise attempting to frustrate court orders, sanctions may become appropriate.

Finally, the trial court awarded Michelle \$1,830.00 toward her attorney fees. As our Supreme Court observed in *Niedlinger v. Niedlinger*, *supra*,

KRS 403.220 authorizes a trial court to order one party to a divorce action to pay a “reasonable amount” for the attorney’s fees of the other party, but only if there exists a disparity in the relative financial resources of the parties in favor of the payor.

52 S.W.3d at 519 (citations omitted). Rick contends that there is no real disparity in the parties’ resources, and thus that the award of fees was not authorized. This contention is based on Rick’s assertion, discussed above, that Michelle’s income should be deemed to include the capital gains realized from the car wash sales. Again, we reject Rick’s contention because Michelle does not have continuing income from capital gains. The trial court found a disparity of more than \$7,000.00 per month between Michelle’s income and Rick’s. This finding was not clearly erroneous. Even taking Michelle’s child support and maintenance into account, the income disparity is still about \$1,000.00 per month, and the property disparity, which includes the residence equity, is substantial. These disparities adequately justified the trial court’s award of attorney fees to Michelle.

In sum, these bitterly contested proceedings have clearly taken a financial toll on the parties and have no doubt taken a heavy emotional toll on all concerned. With one exception, the trial court’s rulings and awards, including those increasing Rick’s child support and maintenance obligations, ordering him to contribute to the children’s parochial school tuitions, and assigning solely to him the delinquent tax liability for one of the car washes, were all based on adequate evidentiary support and were all within the court’s broad discretion. The exception is the trial court’s award of maintenance arrearages, which does not adequately explain why Rick should not be given maintenance

credit for his share of the Mayhall payments and fails otherwise to indicate how the arrearage amount is to be calculated. Accordingly, we vacate the maintenance arrearage portion of the trial court's orders and remand for additional proceedings on that issue. Rick's admitted failure to pay maintenance after the Mayhall payments ceased ought also to be addressed in those proceedings. In all other respects, we affirm the May 20, 2005 and September 8, 2005 orders of the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Russell Lloyd
Ryan N. Pogue
Louisville, Kentucky

BRIEF FOR APPELLEE:

Victoria Ann Ogden
Ogden & Ogden, PLLC
Louisville, Kentucky