

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001529-MR

ROBERT BERT KANNADY

APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT  
HONORABLE LINDA RAE BRAMLAGE, JUDGE  
ACTION NO. 04-CI-01257

SANDRA JEAN KANNADY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND NICKELL, JUDGES; GUIDUGLI<sup>1</sup>, SENIOR JUDGE

GUIDUGLI, SENIOR JUDGE: Robert Kannady (“Husband”) appeals from the Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage entered by the Boone Family Court on June 23, 2006. Husband contends the Circuit Court committed reversible error and abused its discretion when awarding maintenance and marital property to Sandra Kannady (“Wife”). We affirm.

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<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The parties were married on September 30, 1972, and separated on May 17, 2004. Throughout the marriage, Husband maintained continuous employment while Wife stayed home. Occasionally, for Christmas money, Wife would work outside the home. At one time, the couple ran a trailer repair business. Due to failing profits, the couple closed the business in 2001. Soon after, the couple abandoned the marital home and moved in with a friend. On August 19, 2004, Wife filed a petition for dissolution of marriage.

On November 1, 2004, an Agreed Order was entered, requiring Husband to pay \$275.00 per week to Wife, as temporary maintenance. The Agreed Order also stated that Wife would be responsible for paying the debts of the parties with the money she received from Husband. Concurrent to the dissolution action, both parties were pursuing individual bankruptcy actions. Those bankruptcies ended in October of 2005 and were successful in clearing the parties from their debts.

After the parties' separation and during the pendency of the dissolution, Wife failed to obtain employment, citing health problems. Wife's claim for Social Security Disability Insurance was denied. After allowing each party to submit a projected budget, the trial court found Wife's monthly budget to be approximately \$1,600 and Husband's to be approximately \$1,400. The only income between the parties was \$2,738 per month from Husband's two jobs. The court imputed \$900 monthly income to Wife. After taking into consideration each party's budget and projected incomes, the trial

court awarded Wife monthly maintenance in the amount of \$900. The maintenance was scheduled to continue for nine years.

On Appeal, Husband claims the following court errors: 1) failure to consider his ability to meet his needs while meeting those of Wife; 2) continuing the maintenance payment past Husband's retirement age; and 3) awarding marital property to Wife.

Maintenance is decided at the discretion of the trial court. Our review of the trial court's decision is limited to a determination that the findings of fact are clearly erroneous or an abuse of discretion. *Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992). The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004), citing *Commonwealth v. English*, 993 S.W. 2d 941, 945 (Ky. 1999).

The Applicable statute governing spousal maintenance is KRS 403.200. It reads in part:

- (1) . . .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 . . .
- (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 . . . ;
- (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.

Husband claims that the Court failed to consider his ability to meet his financial needs while meeting the needs of Wife. In support of this claim, he makes two arguments. He first argues that a presumption that the parties were unable to meet their reasonable needs was created when they filed for relief from their marital debts under the United States Bankruptcy Code. He next argues that the trial court committed clear error by finding that the parties' standard of living was such that they were capable of meeting their expenses. We disagree.

There is no precedent creating a presumption that people who have filed for bankruptcy are no longer able to meet their reasonable needs. In fact, the purpose of the United States Bankruptcy code is to make sure that those who utilize it will be given a chance to meet their reasonable needs where that chance did not before exist. Both parties were given the opportunity to provide projected budgets to the trial court. In their individual budgets, neither Husband nor Wife accounted for the payment of any marital

debts. This was because they had previously been discharged in the bankruptcy proceedings. The total of both budgets combined is approximately \$3000 per month. Taking into consideration Wife's imputed income of \$900 per month and Husband's actual income of \$2,700 per month, the parties exceed their expenses by approximately \$600 per month. Thus, the trial court's maintenance calculation provides for Husband to enjoy \$400 more than his projected budget and for Wife to enjoy \$200 more than hers. Husband has failed to prove his point. We do not believe the maintenance amount to be clearly erroneous or an abuse of discretion and therefore affirm.

Husband next argues that the Trial Court abused its discretion and committed reversible error by continuing Husband's maintenance payment past the age of 65. In support of his argument, Husband cites *Weldon v. Weldon*, 957 S.W.2d 283 (Ky. App. 1997). The facts in *Weldon* concern a party *receiving* maintenance past the age of 65, not a party *paying* maintenance past the age of 65. Additionally, in *Weldon*, the maintenance award was to continue until the receiver either died or remarried. The reviewing court in *Weldon* found that, at the time of retirement, the receiving party would have received a substantial dollar amount during the twenty years of maintenance and that in the future, the parties would benefit from more balanced incomes. We do not believe the facts of *Weldon* relate to the case before us. KRS 403.200(2) grants the trial court not only the discretion to determine a maintenance amount, but also its duration. Given the large and continuing discrepancy between the parties' income and the length of their marriage, a nine year maintenance award is neither clearly erroneous nor an abuse of

discretion. Should Husband later encounter a changed circumstance that would make the award unconscionable, relief is available to him through KRS 403.250.

Husband's last claim refers to the distribution of marital property. At the time of the final hearing, the parties had already agreed to the distribution of all marital property with the exception of a 1993 Ford Ranger truck valued at \$2,500. The trial court determined that the vehicle should be divided evenly and ordered Husband to pay Wife \$1,250 for her share of the property. Husband now claims that Wife was not entitled to any portion of the vehicle or its value. In support of his argument, Husband claims an economic disparity. Specifically, Husband claims that Wife received the majority of the marital assets and had previously benefited from the receipt of temporary maintenance payments. We do not agree.

Our review of a property division is limited to whether the trial court abused its discretion. *Herron v. Herron*, 573 S.W.2d 342 (Ky. 1978). In determining how marital property is to be divided, the court must divide the property in just proportions, taking into account several statutory factors, including: contribution of each party to property acquisition; value of property; duration of marriage; and economic state of each party. KRS 403.190. Of particular interest to this court is that Husband agreed to the division of assets in a property agreement. The division of assets, with the exception of the vehicle, was done by the parties, not the trial court. It would not make sense to hold the court accountable for an arrangement which the parties themselves created and which has not been challenged as unconscionable. Furthermore, Husband has failed to

present values of the marital assets which would convince us of an inequitable division. The trial court only considered the property placed before it and divided it in an equitable manner. In its Findings of Fact and Conclusions of Law, the trial court makes clear that all factors have been considered. There is no law which states a property distribution must be offset by maintenance payments. In fact, to find so would conflict with the underlying purpose of maintenance and public policy. Therefore, we do not perceive an abuse of discretion in regards to the distribution of the marital vehicle.

For the foregoing reasons, the Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage of the Boone Family Court are affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR  
APPELLANT:

Nicholas M. Nighswander  
Florence, Kentucky

BRIEF AND ORAL ARGUMENT FOR  
APPELLEE:

Suzanne Cassidy  
Covington, Kentucky