

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-002133-MR

SUSAN KAY GOODLETT (NOW BEAGLE)

APPELLANT

v.

APPEAL FROM SPENCER CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 02-CI-00076

LARRY THOMAS GOODLETT

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: CLAYTON, KELLER AND MOORE, JUDGES.

CLAYTON, JUDGE: Susan Kay Goodlett (now Beagle) appeals from a judgment of the Spencer Circuit Court denying her request for permanent spousal maintenance following the dissolution of her marriage to Larry Thomas Goodlett. Finding no abuse of discretion by the trial court, we affirm.

Susan and Larry were married on December 24, 1987, and Larry filed for divorce on April 26, 2002. No children were born of the marriage. The parties were divorced by decree entered on July 8, 2003. The trial court referred the matter to a

Domestic Relations Commissioner (DRC) for a hearing on the contested issue regarding Susan's request for maintenance. After conducting an evidentiary hearing, the DRC issued a Recommended Order filed on August 17, 2004, which found Susan to be permanently and totally disabled, and therefore unable to support herself. The order recommended that Larry pay \$220 per month in maintenance until the Order was modified pursuant to KRS 403.250.

Both parties filed exceptions to the Commissioner's report. The trial court, after consideration of the exceptions, remanded the case back to a different Commissioner for a finding on the issue of maintenance. A hearing was conducted before the Commissioner on August 17, 2006. In the subsequent Findings of Fact, Conclusions of Law and Recommendations, it was ordered that maintenance continue through the end of 2006 and then cease. Susan's exceptions to the DRC report were overruled, and the Commissioners' recommendation was adopted as an Order of the Court on September 8, 2006. This appeal followed.

The decision to grant or deny a maintenance award lies within the trial court's sound discretion in the application of KRS 403.200. *See Leveridge v. Leveridge*, 997 S.W.2d 1, 2 (Ky. 1999). We will only reverse an award of maintenance if we find that the trial court abused its discretion or based its decision on findings of fact that are clearly erroneous. *See Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992). Furthermore, the findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court. Kentucky Rules of Civil Procedure (CR) 52.01. Thus, when the trial court adopts the recommendations of the DRC, those recommendations fall under the same standard of review that is applied to a trial court's

findings. See *Greater Cincinnati Marine Service, Inc. v. City of Ludlow*, 602 S.W.2d 427, 429 (Ky. 1980).

Because no previous order for Larry to pay maintenance could be found in the record, the DRC used the maintenance statute, KRS 403.200, rather than the modification of maintenance statute (KRS 403.250) to determine whether or not maintenance should be awarded to Susan. Apparently, the previous payments were made pursuant to a verbal order.

An award of maintenance is within the sound discretion of the trial court. *Browning v. Browning*, 551 S.W.2d 823, 825 (Ky.App. 1977). KRS 403.200(1) provides that the Court may award maintenance “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”

The DRC found that an examination of the facts and the financial status of Susan indicated that she met both required elements for maintenance. First, examining the record with regard to marital property, it shows that the parties divided the household property and the vehicles; and, Larry received the marital residence, which was in foreclosure. Additionally, Larry obtained his pension as it is, by statute, a non-divisible retirement account. Thus, Susan received no marital property that produces or provides income or support.

Next, with regard to Susan’s ability to support herself, the parties’ “Joint Stipulations of Facts,” entered on July 8, 2004, had a section wherein Susan’s physician testified she was permanently and totally disabled. Additionally, it stated that this

contention was not disputed. Therefore, because of a permanent disability, Susan is not able to support herself.

Once it is established that maintenance is appropriate, KRS 403.200(2) directs the court to set the amount and duration of maintenance after considering enumerated factors, including “(f) the ability of the spouse from whom maintenance is sought to meet his [or her needs] while meeting those of the spouse seeking maintenance.” The DRC’s report relying on *Dotson v. Dotson*, 864 S.W.2d 900 (Ky. 1993), asserted that the trial court must consider Larry’s ability to meet his own needs as well as Susan’s needs. He earns \$38,000 per annum with \$31,908 in yearly expenses. Subtracting Larry’s reported monthly expenses of \$2,659 from his net monthly income of \$2,058 gives him a net monthly deficit of \$600, which according to Larry’s testimony, he regularly sustained. In addition, the Commissioner found that Larry explained and justified all his itemized expenses.

Susan receives \$114 per month from Workers’ Compensation, \$607 per month in Social Security benefits, \$10 per month in food stamps, and \$221 per month in rent assistance. The total of her sources of income/assistance equals \$952 per month. She proffered a list of monthly expenses equaling approximately \$1,678. Therefore, according to the record, Susan has a monthly deficit of \$726.

However, the DRC’s report questioned the legitimacy of some of Susan’s expenses. For example, the report concludes that if she only goes out for medical appointments and grocery-shopping, her monthly clothing allowance of \$75 and monthly dry cleaning allotment of \$10 are unnecessary. Also, since Susan testified she rarely uses the internet, she does not need the monthly \$35 expense for internet service.

Furthermore, the Findings characterized Susan's explanation for the budget expense of \$100 for monthly replacement cost for household goods as vague. Finally, the Commissioner in the Conclusions stated that in a cash-strapped budget, charitable and church contributions (\$22.50 per month) are commendable but should not be used to increase expenses. Finally, he found that cable television (\$63.27 per month) was a luxury.

Moreover, even though the parties had stipulated that Susan was permanently and totally disabled, the Commissioner was skeptical about her not being able to find employment that would allow her to work from home, particularly since Susan is able to use a conventional computer keyboard.

Thus, the Commissioner's report recommended that Susan was entitled to temporary maintenance from the date of the entry of the decree (7/8/2003) until December 31, 2006. This temporary maintenance was in the form of premium payments for Susan's State Farm whole life insurance policy (until Appellant cashed this policy) and her supplemental Medicare policy.

The report recommended that, notwithstanding Susan's *prima facie* case for the elements of maintenance, she was not entitled to an order of permanent maintenance. The Commissioner reasoned that Larry is unable to pay further maintenance and meet his own expenses. *See* KRS 403.200(2)(f). Adding support to Larry's inability to continue paying maintenance, was the Commissioner's skepticism about some of Susan's monthly expenses. Finally, the adopted recommendations included the suggestion that, notwithstanding Susan's permanent disability, Susan, based on her ability to use a

conventional computer keyboard, could potentially work from home to supplement her income.

There is nothing in the record before us to cause us to believe that the DRC failed to consider all relevant statutory factors. In fact, the DRC made specific reference to the parties' income, skills, and Larry's inability to meet his own financial needs while continuing to pay maintenance to Susan.

In short, we find no clearly erroneous fact findings and no abuse of discretion in the awarding of maintenance in this case. The DRC properly considered the factors set forth in KRS 403.200(2). We will not disturb his decision.

For the foregoing reasons, we affirm the decision of the Spencer Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Deborah O. King
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BRIEF FOR APPELLEE:

Susan M. Meschler
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