

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002153-MR

TERESA ANN CAUDILL (FORMERLY FRALEY)

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JR., JUDGE
CIVIL ACTION NO. 05-CI-00023

TROY DENNIS FRALEY

APPELLEE

OPINION

REVERSING AND REMANDING

** ** *

BEFORE: ACREE AND LAMBERT, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ROSENBLUM, SENIOR JUDGE: Teresa Ann Caudill (formerly Fraley) appeals from the Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage of the Lee Circuit Court denying her maintenance in the dissolution of marriage action brought against her by her now ex-husband, Troy Dennis Fraley. Finding error, we reverse and remand.

¹ Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Teresa and Troy were married on July 3, 1982. The couple do not now have any minor children. The couple separated in January 2006, and Troy filed for divorce later that year. On May 17, 2006, after several hearings before the Domestic Relations Commissioner (Commissioner), he entered Findings of Fact and Conclusions of Law. Objections to the Commissioner's findings were filed and the trial court entered an order on July 20, 2006, overruling the objections. Thus, the court adopted the Commissioner's recommendations denying maintenance without stating its reasons for doing so. The decree of dissolution of marriage was entered on July 31, 2006.

Teresa's sole argument on appeal is that the trial court erred by failing to award her maintenance. We agree.

Pursuant to Kentucky Revised Statute (KRS) 403.200(1)(a) and (b), the trial court could have granted Teresa a maintenance award only if it found that: (1) she lacked sufficient property, including marital property apportioned to her, to provide for her reasonable needs; and (2) she was unable to support herself through appropriate employment or was the custodian of a child whose condition or circumstances made it appropriate that she not be required to seek employment outside the home. *Id.*

If the court had determined that Teresa should have been awarded maintenance, then it was required to make the award “in such amounts and for such periods of time as the court deems just, after considering all relevant factors[.]” KRS 403.200(2). Those factors include:

- (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability

to meet his 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.

Id.

In *Perrine v. Christine*, 833 S.W.2d 825 (Ky. 1992), the Kentucky Supreme

Court stated as follows:

Under this statute [KRS 403.200] 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 are clearly erroneous or that the trial court has abused its discretion.

Id. at 826.

In making its decision, the trial court must determine whether the spouse seeking maintenance lacks sufficient property to meet her reasonable needs and is unable to support herself through appropriate employment **according to the standard of living established during the marriage**. *Casper v. Casper*, 510 S.W.2d 253, 255 (Ky. 1974).

(Emphasis added). An award of maintenance may be made in the sound discretion of the trial court. *Clark v. Clark*, 782 S.W.2d 56, 59 (Ky.App. 1990). To reverse an award or denial of maintenance, the complaining party must show an “absolute abuse” of this discretion by the trial court. *Id.* at 60.

At the hearing regarding maintenance before the Commissioner, Teresa asked for temporary maintenance of \$400 per month. In its final decree, the court did not make any findings concerning maintenance.² A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to CR³ 52.02. Here, Teresa apparently failed to request that the trial court issue additional findings of fact regarding the maintenance issue. We are thus constrained to determine only whether the trial court abused its discretion by not awarding maintenance.

The uncontroverted facts are that Troy is employed as a signal maintainer for CSX Railroad and earns approximately \$65,000 annually. Teresa's work experience and education are limited and she earns approximately \$14,000 per year. There was minimal property left after the marriage and proceeds from the sale of the marital residence were divided equally between the parties in the amount of \$26,000 each. The

² Such findings were required pursuant to *Perrine, supra*. See also Justice's Keller's opinion concurring in part and dissenting in part in *Powell v. Powell*, 107 S.W.3d 222, 226-27 (Ky. 2003).

³ Kentucky Rules of Civil Procedure.

parties were married for 24 years and apparently enjoyed an elevated standard of living together.

In similar cases, the decision of a trial court to deny maintenance or award insignificant amounts of maintenance have been reversed. *See, e.g., Powell v. Powell*, 107 S.W.3d 222 (Ky. 2003); *Weldon v. Weldon*, 957 S.W.2d 283 (Ky.App. 1997); *Combs v. Combs*, 622 S.W.2d 679 (Ky.App. 1981). Here, considering the minimal non-marital and marital property assigned to Teresa, the extreme disparity in the respective incomes of the parties, the standard of living established by the parties during the marriage, the extensive duration of the marriage, and Teresa's limited education and work experience, we find that the court clearly abused its discretion in denying maintenance to Teresa. Accordingly, we reverse and remand with directions to the trial court to award Teresa an appropriate amount of maintenance after giving due consideration to all relevant factors.⁴

The judgment of the Lee Circuit Court is reversed and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Virginia Meagher
Booneville, Kentucky

BRIEF FOR APPELLEE:

Jason S. Wilson
Richmond, Kentucky

⁴ Teresa suggests in her brief that this court should set the maintenance award at \$600 per month. However, the trial court rather than the appellate court must make this determination.