

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001342-MR

MARY SPANNKNEBEL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE TARA HAGERTY, JUDGE
ACTION NO. 13-CI-502933

EVAN SPANNKNEBEL

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: COMBS, J. LAMBERT AND VANMETER, JUDGES.

VANMETER, JUDGE: Mary Virginia Spannknobel (Mary) appeals an order from the Jefferson Family Court entered June 18, 2015 with respect to the division of marital property and arrears for maintenance. For the following reasons, we vacate and remand.

I. Factual and Procedural Background.

Mary and Evan Charles Spannkebel (Evan) were married in October 1985, and Mary filed for divorce in September 2013; the parties have one adult son. The parties owned a marital home, which was deeded in both parties' names; however, the mortgage was in Mary's name alone. As of June 2015, the principal on the mortgage of the marital home was approximately \$135,000, and three realtors advised that the home had little to no equity. One realtor valued the property at \$155,000 but recommended a short sale and roof repair, estimated to cost \$4,300; the second realtor valued the property at \$130,500; and the third realtor placed the value between \$80,000 and \$85,000.

During the marriage, both parties worked outside the home. Mary has worked for Maker's Mark for thirteen years; however, she has been on short-term disability since June 2013 as the result of an accident that occurred outside of her employment. Evan is currently employed by USA Trucking as an over-the-road truck driver.

Following a hearing in November 2013, Mary was awarded temporary maintenance of \$700 per month. In April 2014, the trial court entered a Decree of Dissolution of Marriage, and issued a findings of fact and conclusions of law. In the Decree of Dissolution, the trial court ordered the following: Evan must pay Mary \$700 per month in maintenance for nine years; the marital home must be immediately placed for sale; any the proceeds of the sale of the home were to be used first to satisfy the mortgage loan, and then to satisfy joint debts, including a

Lowe's credit card bill and the parties' prior tax bills; and the parties' joint E-trade account was to be closed, with the proceeds divided equally.

On October 9, 2014, the trial court awarded Mary \$7,697.44 for unpaid maintenance from October 2013 to September 2014. Evan did not deny he had not paid his maintenance obligation, but asserted that he did not have the financial resources to meet his obligation. In May 2014, Evan asked the court to alter, amend, or vacate the maintenance obligation in the Decree of Dissolution. The trial court denied his motion because the time period had passed in which the trial court had jurisdiction pursuant to CR¹ 59.05 to hear such a motion. Evan did not appeal this ruling and has not filed any other motion to modify or recalculate his maintenance award.

On March 3, 2015, the trial court awarded Mary a second judgment for Evan's unpaid maintenance, finding the total arrearage between October 2013 and January 2015 to be \$10,422.44; this order also found Evan in contempt and awarded Mary attorney's fees for the enforcement of the maintenance award. Evan was given the opportunity to purge himself of contempt by paying Mary \$3,000 within sixty days of the court's March 2015 order, and he was ordered to make timely payments each month plus \$50 towards the remaining arrearage.

On June 18, 2015, the trial court entered an order (hereinafter "June 2015 Order") finding that Evan had paid a total of \$1,442 in maintenance through wage garnishment, but had not purged himself of contempt. The trial court

¹ Kentucky Rules of Civil Procedure.

awarded Mary the parties' marital residence, and any associated debt, and ordered that Evan execute a quit-claim deed within fourteen days. Upon the sale of the property, Mary was to receive all of the equity in the property; 50% of the equity in the property as of the date of the Decree of Dissolution was to be applied to Evan's maintenance arrears; and if Mary paid any amount towards the principal of the mortgage before she sold the house, she was entitled to the entirety of any additional equity. Mary was also awarded all furniture still in the marital home and any remaining personal property, including Evan's semi-automatic pistol, the value of which was applied to Evan's arrearage. The trial court held that the value of Evan's share of the marital property plus his share of any equity in the marital residence satisfied his current maintenance arrearage. Evan was ordered to continue to pay the \$700 per month maintenance, and if he was unable to do so, urged to file a motion for modification. Last, the trial court ordered Evan to pay \$2,500 within thirty days towards Mary's attorney's fees in seeking the enforcement of her maintenance award, which the court calculated at \$4,700.

Mary filed a Motion to Alter, Amend, or Vacate on June 29, 2015, which the trial court overruled on August 12, 2015. This appeal follows.²

II. Standard of Review.

² In the divorce proceedings, Evan never filed a Response in the action, and has proceeded *pro se* for the majority of the proceedings. We further note Evan did not file a brief with this court. CR 76.12 (8)(c) states: "If the appellee's brief has not been filed within the time allowed, the court may: (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case." We have elected not to penalize Evan and shall address the case on its merits.

“The trial court has inherent power to punish individuals for contempt, and nearly unfettered discretion in issuing contempt citations. [The appellate court] will reverse a finding of contempt only if the trial court abused its discretion in imposing the sentence.” *Crowder v. Rearden*, 296 S.W.3d 445, 450-51 (Ky. App. 2009) (internal citations omitted). “The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

III. Analysis

Mary makes two arguments on appeal. First, she argues that the trial court erred in not making a finding as to the value of the equity in the marital home and personal property before using those assets to offset Evan’s maintenance arrearage, amounting to an abuse of discretion. Second, she contends that the trial court’s abused its discretion in denying her Motion to Alter, Amend, or Vacate.³

First, Mary argues that the trial court trial court abused its discretion in offsetting the arrearage with the home and personal property since no evidence supported a finding that these were of equal value, and thus incorrectly offset Evan’s maintenance arrearage. We agree.

The June 2015 Order held Evan in continued contempt for repeated failure to pay maintenance, or any of the amounts required by the court to purge

³ We will not address her CR 59.05 Motion since we vacate the June 2015 Order and remand for the trial court to make the necessary explicit findings.

himself of contempt. We agree that the trial court was within its discretion to hold Evan in contempt for continued failure to pay his maintenance obligation.

However, in this June 2015 Order, the trial court also attempted to modify Evan's maintenance arrearage by reassigning the marital residence, personal property, and tax debt. Although, KRS 403.250(1) permits modification of a divorce degree regarding maintenance "upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable," no motion for modification has been made in this case. Therefore, the trial court's modification of Evan's arrearage is in error.

Furthermore, the trial court's attempt to apply Evan's share of the marital home and personal property to his arrearage is also in error because the trial court made no finding as to the value of: the marital home, any equity in that home, the furniture, or the value of the personal property in the home, including the gun. Although we give deference to a trial court's findings of fact, the trial court made no explicit findings of fact to which we can defer.⁴ We therefore vacate the June 2015 order, and remand to the trial court to make the necessary findings of fact.

IV. Conclusion

For the foregoing reasons, we vacate the order of the Jefferson Family Court, and remand for further proceedings consistent with this opinion.

ALL CONCUR.

⁴ We appreciate the difficulty the trial court faces in dealing with cases in which limited financial resources may affect the disposition of property.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

Anne P. Scholtz
Louisville, Kentucky