



Catt v. Catt

2006 | Cited 0 times | Court of Appeals of Kentucky | October 6, 2006

NOT TO BE PUBLISHED

OPINION

AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART, AND REMANDING

BEFORE: COMBS, CHIEF JUDGE; VANMETER, JUDGE; BUCKINGHAM,¹ SENIOR JUDGE.

Connie Catt and her attorney, Pamela C. Bratcher, appeal from an order of the Edmonson Circuit Court approving and adopting a report by a domestic relations commissioner (DRC) that had decided various issues in Catt's divorce proceeding with her husband, Norman Catt. The trial court made various errors, some of which have been acknowledged by Norman. We affirm in part, reverse in part, vacate in part, and remand.

Connie and Norman were married in 1972. Norman had begun working for General Motors four years before the couple married. Connie and Norman had three children, the youngest of whom was Adam who was born on September 4, 1984. Norman was employed as a janitor at the Corvette Plant in Bowling Green, Kentucky. Connie primarily served as a homemaker during the marriage.

Connie and Norman separated on January 9, 2003, and Connie filed a petition for dissolution of marriage later that month. At that time, Adam was 18 years old and a junior in high school.

The many issues involved in the case were heard by a DRC. After several hearings before the DRC and several sets of exceptions taken to the DRC's rulings, the court entered an order on January 26, 2005, approving and adopting the DRC's report. This appeal by Connie and her attorney followed.

Eight separate issues have been raised on appeal. Because many of the issues resolved by the trial court have not been appealed from, we will not set forth the entire set of facts and determinations made by the DRC and the court. Rather, we will address them only to the extent they are necessary to the resolution of the arguments raised in this appeal.

Norman has acknowledged that the trial court erred in connection with two of the arguments raised by Connie in her brief. The first error relates to Norman's personal savings plan (PSP) at General Motors. This plan had a value of approximately \$59,000 on January 9, 2004. The court designated 12% of this asset as non-marital property.



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Norman agrees that the court erred in this regard.²

There was no evidence that any part of the asset was non-marital. On remand, the value of the plan on the date the decree of dissolution was adopted must be designated as marital property and divided accordingly. We reverse and remand for this purpose.

Second, Norman agrees with Connie that the court erred in terminating Norman's child support obligation on Adam's 19th birthday. Norman's child support obligation should have continued through the school year in which Adam turned 19. See KRS³ 403.213 and *Francis v. Francis*, 148 S.W.3d 805, 807 (Ky.App. 2004). As no one has contested the monthly amount of the child support award, on remand the court should determine the last day for the 2003-2004 school year and then determine the amount of additional support Norman owes to Connie based on the rate of \$896 per month. We reverse and remand for this purpose.

Having disposed of the two arguments raised by Connie with which Norman agrees, we now turn to Connie's six remaining arguments. Connie first argues that the trial court erred in awarding her \$2,000 per month as maintenance. She asserts that the amount is inadequate and that the court failed to make specific findings of fact pursuant to KRS 403.200. The court awarded Connie maintenance "at \$2000.00 a month less \$750.00 a month paid by Respondent's retirement fund which she is entitled to immediately[.]" The court made this award for life.

An award of maintenance is left to the sound discretion of the trial court. See *Gentry v. Gentry*, 798 S.W.2d 928, 937 (Ky. 1990). On review, the court's decision as to maintenance will only be set aside if the findings under the threshold requirements are clearly erroneous or if the amount or duration determination constitutes an abuse of discretion. *Id.* We find no error or abuse of discretion in the award of monthly maintenance at \$2,000 for life. Further, the court made adequate fact findings.

Nevertheless, we agree with Connie that the language of the court is confusing and that the matter should be vacated and remanded to the trial court for clarification. The confusion results from the court's reference to the \$750 per month Connie is to receive through Norman's vested retirement. This language is subject to two interpretations.

First, the court may have intended to award Connie only \$1,250 per month as maintenance. On the other hand, the court may have meant that a portion of Norman's maintenance obligation of \$2,000 was to be satisfied by his paying Connie \$750 per month through his vested retirement. This would be error as the amount Connie is entitled to under the pension is actually her share of a marital asset and cannot serve to decrease Norman's maintenance obligation of \$2,000 per month.⁴

Given this confusion, we must vacate the maintenance award and remand the matter for the court to clarify Norman's actual maintenance obligation.



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Next, Connie argues that the court erred when it failed to order the equitable division of all components of Norman's retirement plan. Further, she asserts that the court erred when it failed to order the division through Qualified Domestic Relations Orders (QDROs).

Norman testified that his retirement consisted of two separate components. There was a vested component valued at \$1,500 per month and an unvested component that would become set at his retirement. The court found that 12% of the retirement was non-marital. The court then divided the vested component of \$1,500 per month equally, awarding Connie \$750 per month.⁵ That amount was then subtracted from the maintenance award as we have noted above. Further, the court dealt with the 12% non-marital portion by stating that it would be considered in the division of other marital assets. No QDROs were entered to implement the court's decision dividing the two components.

Norman argues that the unvested component of his retirement was "only a benefit in theory" and was not divided for that reason. He suggests that Connie could file a CR 60.02 motion at a later date "if it ever becomes a reality." We reject this argument. In short, we agree with Connie that the court erred in not entering QDROs to implement its decision concerning the division of the components of Norman's retirement plan. Thus, we remand this matter for the entry of QDROs.

We now turn to Connie's remaining four arguments. The first involves the credit card debt of \$20,333, which the court divided equally. The court directed Norman to pay the entire debt, and it then allowed him credit back against Connie's share of his PSP. "[I]ssues pertaining to the assignment of debts during the marriage are reviewed under an abuse of discretion standard." *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). Connie does not argue that these debts were not for marital debts, nor does she argue that she obtained no benefit from the debts. She simply feels that Norman is in a better position to pay them. We find no abuse of discretion by the court in this matter.

Connie argues that the court abused its discretion in ordering the house to be sold and the proceeds divided equally. The parties agreed that the house had a fair market value of approximately \$100,000. Further, the parties agreed that the two mortgages amounted to approximately \$65,000. At the time the court entered its order in this regard, both mortgages were in arrears and foreclosure actions were pending. Connie has made no suggestion as to how to bring both mortgages current and resolve the foreclosure proceedings, nor has she proposed how she might buy out Norman's equity or how future payments might be made. Under these circumstances, we find no abuse of discretion by the court in ordering the house to be sold and the proceeds divided equally.

Connie next argues that the court abused its discretion in not ordering Norman to pay an additional \$900 to her toward her expert witness fee. The facts in this regard are that Connie hired an expert witness, Dr. David Kapley, to testify concerning her severe depression, anxiety disorder, and resulting disability. Dr. Kapley's total fee was \$1,600. The court ordered Norman to pay \$700 of it. Connie argues that the court should have ordered Norman to pay the entire amount because of his



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earning power. An award of costs falls entirely within the discretion of the trial court. See Wilhoit v. Wilhoit, 521 S.W.2d 512, 514 (Ky. 1975). We find no abuse of discretion in the court's denial of Connie's motion for Norman to reimburse her for the entire amount of the fee.

Finally, Connie argues that the court abused its discretion in awarding her only \$5,000 in attorney fees against Norman when the total owed to her attorney at the time was over \$10,000. An award of attorney fees is "entirely within the discretion of the trial court." See Poe v. Poe, 711 S.W.2d 849,852 (Ky.App. 1986). We find no abuse of discretion in this regard.

The order of the Edmonson Circuit Court is affirmed in part, reversed in part, vacated in part, and remanded.

ALL CONCUR.

1. Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.
2. The court apparently confused Norman's PSP with his retirement/pension plan, in which he did have a 12% non-marital interest.
3. Kentucky Revised Statutes.
4. This latter interpretation appears more likely. However, we will vacate and remand so that the court may clearly state its intention.
5. We fail to understand how Connie could receive \$750 per month from Norman's retirement plan when Norman had not yet retired. The fact that that portion of his plan was vested may not mean that it was subject to payment at that time, although that is what Norman testified to. We have doubts concerning whether Norman's employer will pay Connie half of Norman's vested retirement before he retires.

