

RENDERED: October 24, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-0013-MR

PHILIP W. LEVERIDGE

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 94-CI-0948

THERESA M. LEVERIDGE,
GLEN S. BAGBY, and
BEVERLY B. POLK

APPELLEES

OPINION

VACATING AND REMANDING WITH DIRECTIONS

** ** ** **

BEFORE: KNOPF, MILLER, and SCHRODER, Judges.

MILLER, JUDGE: Philip W. Leveridge brings this appeal from a decree of the Fayette Circuit Court entered July 5, 1995, amended December 8, 1995. We vacate and remand with directions.

Philip and co-appellee, Theresa M. Leveridge, were married on January 22, 1977, and separated on March 24, 1994. A Dissolution of Marriage action ensued in the Fayette Circuit Court resulting in the decree and order of amendment from which this appeal is taken. The parties were awarded joint custody of

their two children, with Theresa serving as primary custodian. The court also granted Theresa maintenance for a period of twelve years to be paid in the amount of \$750.00 per month for five years and then decreased to \$500.00 per month for the remainder of the period. Pursuant to Ky. Rev. Stat. (KRS) 403.220, Theresa was awarded legal fees in the amount of \$2,500.00. This appeal follows.

Philip contends that the circuit court committed reversible error in its award of maintenance to Theresa. KRS 403.200 provides that a court may award maintenance to either spouse if it finds that the spouse seeking maintenance lacks sufficient property to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment. It is, of course, well established that an award of maintenance is a matter within the sound discretion of the circuit court. Calloway v. Calloway, Ky. App., 832 S.W.2d 890 (1992).

The record discloses that Philip and Theresa were married for approximately eighteen years. During the early marriage, Theresa worked as a dental assistant, but terminated this employment and, for the majority of the marriage, did not work outside the home. After the parties separated, Theresa returned to work in 1994 as a dental assistant, but was terminated from her position because of deficient skills. She opted to attend Lexington Community College and is now attempting admittance to the dental hygiene program. Theresa testified that she is capable of earning \$15,000.00 per year at this time and,

if admitted to and completes the dental hygiene program, she will earn roughly \$30,000.00. The evidence established that Philip earns approximately \$66,000.00. Each party received assets from the marital estate in the amount of \$170,000.00. Among Theresa's assets was a home free of indebtedness. She testified that her monthly income needs were \$1,600.00 to \$1,700.00. Upon these facts, the circuit court entered the twelve-year maintenance award. We are of the opinion that the order constituted a lump-sum award that is not subject to modification. See Dame v. Dame, Ky., 628 S.W.2d 625 (1982), and John v. John, Ky. App., 893 S.W.2d 373 (1995).

Under the circumstances, we are of the opinion that the award of maintenance was clearly excessive and constituted an abuse of discretion. In determining the amount and duration of maintenance, KRS 403.200(2)(b) requires the circuit court to consider, among other things, "the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment." In this case, the circuit court found that Theresa was attempting to gain admittance to a dental hygienist training program. The court further noted that Theresa had enrolled as a beginning undergraduate student in 1995. Under these circumstances, we believe maintenance would be appropriate during the time necessary to complete her degree or training. Furthermore, the circuit court may, in its discretion, extend maintenance for a brief period thereafter to allow Theresa to become established. However, the court's award of maintenance for a twelve-year period, following a

seventeen-year marriage, where the spouse is able to be retrained and earn substantial income, was clearly excessive.

Philip maintains that the circuit court committed reversible error in its award of attorney fees to Theresa. KRS 403.220 permits the circuit court to order payment of a reasonable attorney fee if mandated by the financial resources of the parties. While we think the fee award is somewhat questionable, we are not inclined to reverse on this issue. As an appellate court, our authority is enunciated in Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982) (holding that upon appellate review, the test is not whether we would have decided the issue differently, but whether the findings of the trial judge are clearly erroneous or an abuse of discretion).

Philip asserts that the circuit court abused its discretion in its award of personal marital property to Theresa. He contends that a stipulation was entered into by the parties that each would receive one-half of the marital personal property, but the court did not divide the personal property accordingly. We note, however, that Philip has failed to provide this court with a valuation of the personal property in order to determine whether an equal distribution was made. In fact, Theresa points out that no such valuation of the personal property ever took place. As such, we cannot say that the circuit court's division of the marital personal property was in degradation of the parties' stipulation.

For the foregoing reasons, the order of the circuit court is vacated, and this cause is remanded for reconsideration of the maintenance award.

ALL CONCUR.

BRIEFS FOR APPELLANT:

James M. Morris
Sharon K. Morris
Morris & Morris, PSC
Lexington, KY

BRIEF FOR APPELLEE LEVERIDGE:

Diana L. Beard
Virginia L. Lawson & Assoc.
Lexington, KY

BRIEF FOR APPELLEES BAGBY AND
POLK:

J. Robert Lyons Jr.
Brock, Brock & Bagby
Lexington, KY