

McGUIRE v. McGUIRE.

5-2006

331 S. W. 2d 257

Opinion delivered February 1, 1960.

1. DIVORCE—TEMPORARY MAINTENANCE AND ATTORNEY'S FEE.— The granting of support and attorney's fee are within the sound discretion of the trial court and will not be disturbed on appeal unless there has been an abuse of discretion.
2. DIVORCE—TEMPORARY MAINTENANCE AND ATTORNEY'S FEE, WEIGHT AND SUFFICIENCY OF EVIDENCE.—Husband, a retired railroad man and war veteran with a monthly income of \$210.36 showed that he had expenses in excess of \$140 per month for room, rent, food, etc., while the wife enjoyed the possession of the family home and had access to other benefits. *HELD*: The Chancellor's award of \$100 per month to wife for support should be reduced to \$75, but that the \$75 awarded for wife's attorney's fee is reasonable.

Appeal from Saline Chancery Court; *F. D. Goza*, Chancellor; modified and affirmed.

J. B. Milham, for appellant.

C. M. Carden, for appellee.

JIM JOHNSON, Associate Justice. This appeal comes to us from a Chancery Court's award of temporary support and attorney's fee.

Appellant, J. W. McGuire, and appellee, Katie McGuire, are husband and wife. They have been married for the past 23 years. The parties were separated in April 1959 and on June 9, 1959, appellee filed a separate maintenance suit. Upon a hearing of the cause, appellant was ordered to pay \$100 per month temporary support and \$75 attorney's fee, from which order comes this appeal.

The law relative to temporary support is well settled. Section 34-1210, Ark. Stats. provides:

“During the pendency of an action for divorce or alimony, the court may allow the wife maintenance and a reasonable fee for her attorneys, . . .”

This Court has said many times that the granting of support and attorney's fee are within the sound dis-

cretion of the trial court and will not be disturbed on appeal unless there has been an abuse of this discretion. *Lewis v. Lewis*, 222 Ark. 743, 262 S. W. 2d 456; *Aucoin v. Aucoin*, 211 Ark. 205, 200 S. W. 2d 316.

On trial *de novo* we find that appellant is a war veteran and a retired railroad man; that from these sources he receives a monthly income of \$210.36. Appellant left appellee in possession of the family home. There was no testimony in the record as to appellee's need for current living expenses; on the other hand there was ample testimony as to appellant's needs. His room, rent, food, insurance and other expenses total an amount in excess of \$140 per month. Based on this testimony and the existence of other benefits enjoyed by the wife, we are of the opinion that the decree of the Chancellor should be modified to the extent of allowing the wife \$75 per month as temporary support; that the attorney's fee in the amount of \$75 is reasonable. However, the prayer for an additional fee, made necessary in the prosecution of this appeal, is passed to be considered by the trial court when the case is heard on its merits.

Modified and affirmed.
