

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000409-MR

VELISA KAY RICE

APPELLANT

v. APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 01-CI-00017

BOBBY RAYMOND RICE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KNOPF, and McANULTY, Judges.

COMBS, JUDGE. This is an appeal from a judgment entered by the Adair Circuit Court in an action for dissolution of marriage. Velisa Rice, the appellant, contends that the trial court made inadequate findings of fact, that it abused its discretion by failing to award her maintenance, and that it erred as a matter of law by enforcing the terms of the parties' postnuptial agreement. After our review of this matter, we affirm.

Velisa and Bobby Rice married in July 1988. Velisa was working as a retail sales manager, and Bobby was employed as a district sales manager for Kentucky Farm Bureau. Both parties had been married previously, and both had experienced difficult divorce proceedings. As a result, they executed an agreement settling their respective financial positions in the event of divorce. Because they could not meet with their selected lawyer before their wedding date, the agreement was not executed until August 1988 -- two weeks after their marriage.

The agreement identified the property that each spouse brought to the marriage and provided that each would retain his or her interest in the described property in the event of divorce. The agreement also provided that later acquired marital property (other than that specifically identified) would be divided equally between them upon a divorce. Each party reserved the right to execute a will in which he or she could dispose of the separate property. As her separate property, Velisa listed a pick-up truck and a one-half interest in a house and lot in Knifley, Kentucky. Bobby's separate property included: a one-third interest in a family-farm located in Elliot County; a residence on Lindsey Wilson Street in Columbia, Kentucky; a substantial retirement account with Kentucky Farm Bureau; and a 40% interest in B & B Amusements, Inc.

On February 6, 2001, Bobby filed a petition for dissolution of the marriage. Velisa remained in the residence on Lindsey Wilson Street and was awarded \$450.00 per month in temporary maintenance. The parties eventually entered into a settlement agreement that divided all of the household marital property, their vehicles, a boat, and a motor home. The agreement also itemized each party's non-marital household property. However, they disagreed as to whether their postnuptial agreement was enforceable -- and if so, whether its provisions governed the division of the Lindsey Wilson Street residence, the Kentucky Farm Bureau retirement account, and Velisa's entitlement to permanent maintenance.

Thorough hearings were conducted in January 2002. On November 6, 2002, the trial court entered findings of fact, conclusions of law, and a divorce decree. Concluding that the parties' postnuptial agreement was valid and enforceable, and pursuant to its explicit provisions, the court awarded the Lindsey Wilson Street residence and the Kentucky Farm Bureau retirement account to Bobby. The court denied Velisa's request for maintenance based upon its application of the provisions of KRS¹ 403.200. Velisa's motion for additional findings of fact was denied, and this appeal followed.

¹ Kentucky Revised Statutes.

Velisa argues that the trial court erred in concluding that there had been no change in facts or circumstances so as to render unconscionable the enforcement of the parties' post-nuptial agreement. She also contends that the judgment was not supported by sufficient findings of fact. We disagree.

The trial court did not err by finding that the postnuptial agreement was valid and enforceable. In Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990) and Edwardson v. Edwardson, Ky., 798 S.W.2d 941 (1990), the Kentucky Supreme Court determined that trial courts must consider the following three criteria in determining whether to enforce a prenuptial or a postnuptial agreement: 1) whether the agreement was obtained through duress, fraud, mistake, misrepresentation, or nondisclosure of material facts; 2) whether the agreement was unconscionable at its consummation; and 3) whether changed circumstances at the time when enforcement is sought render the enforcement of the agreement unfair. Gentry, 798 S.W.2d at 936; Edwardson, 798 S.W.2d at 945-946.

The evidence in this case clearly reveals that a full and fair disclosure of assets was made by each party and that Velisa fully understood the nature and extent of Bobby's relatively modest holdings. It is also clear that Velisa freely and voluntarily waived any right to the assets. The court found credibility and accuracy in Bobby's testimony with respect to

the execution of the agreement. It determined that the parties had discussed the agreement on several occasions. "Each of the parties had been through a divorce and [Velisa] was fully aware of what she was doing. There was no fraud, duress, mistake, misrepresentation or non-disclosure." Decree of Dissolution at 3.

The court also properly concluded that the parties' agreement was fair and reasonable at the time it was consummated. Velisa offered no testimony -- nor does she argue on appeal -- that the agreement was unfair at the time of its execution. The parties collaborated to negotiate the terms of the agreement and were fully aware of the agreement's specific effects. Both parties sought to protect only the assets which they brought to the marriage along with any increase in the value of those assets. The agreement provided for the accumulation of marital property during the marriage and provided that only those subsequently acquired assets would be subject to division in the event of divorce. The court found that there was "no creditable evidence to show that the agreement was unconscionable." Id.

Finally, the trial court found that there had not been "any change in fact or circumstance since the agreement was executed that would make the agreement unfair and unreasonable." Id. The court determined that the parties' circumstances at the

time of dissolution were well within their contemplation at the time of the execution of their agreement. There is absolutely no evidence that the court erred in so concluding. At the time that she executed the agreement, Velisa understood that the value of Bobby's holdings could increase or decrease over time. Moreover, she presented no evidence to suggest that her financial situation had deteriorated materially or beyond her contemplation as of the time of dissolution. Because the parties were aware that the value of the Kentucky Farm Bureau retirement account could fluctuate as might the value of the residence on Lindsey Wilson Street, the court did not err by finding that enforcement of the terms of the parties' agreement was fair and reasonable.

The terms of the postnuptial agreement are precise with respect to the division of assets in the event of divorce. Having determined that the agreement was valid and enforceable, the trial court correctly concluded that its terms properly governed the disposition of the contested assets. The house on Lindsey Wilson Street (including the mortgage) was awarded to Bobby as was his retirement account with Kentucky Farm Bureau. We find no error.

Additionally, the findings of fact were adequate to sustain the judgment of the court. Velisa argues that:

The court cannot reach a conclusion that there has not been a change in facts or circumstances which would make the agreement unfair and unreasonable, unless the court looks at the various financial events, various circumstances and financial dealings which took place after the parties were married, and the evidence presented to it regarding these important matters. The question for the court pursuant to Gentry-Edwardson is upon consideration of the evidence, to what extent, if any, have facts and circumstances changed at the time enforcement of the agreement is sought and whether, based on those changed facts and circumstances, the terms and provisions are unconscionable.

Appellant's brief at 4. We have found no indication that the court failed to weigh and properly evaluate the nature of the parties' financial transactions or any other relevant fact or circumstance in reaching its determination with respect to the enforceability of the agreement. Velisa refers to issues relating to the expected changes in the value of the marital property and in the nature of the parties' debt. She also cites Bobby's decision to give her a survivorship interest in the Lindsey Wilson Street residence as long as they remained married. However, these matters ultimately had no bearing on the enforceability or application of the literal, clear terms of the unamended agreement itself. Extraneous facts contained in the record need not be addressed or reduced to a specific finding of the court. A court is required to make findings

sufficient and specific enough to support a judgment. CR 52.01. Its opinion must reflect its comprehension of the evidence, a determination as to the material issues of fact, and an analysis and application of the law to the issues. Shepherd v. Shepherd, 295 S.W.2d 557 (1956). In this case, we conclude that the findings of fact were adequate to support the court's ruling that the postnuptial agreement remained valid and enforceable at the time of dissolution.

Velisa next argues that the court erred in failing to award maintenance to her. She also contends that the court failed to make sufficient findings of fact to support this determination. We disagree.

Maintenance may be awarded to either party if the court finds that the spouse seeking maintenance lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs and that he is unable to support himself through appropriate employment. KRS 403.200. The matter of maintenance is within the sound discretion of the trial court. Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977). "An appellate court is not authorized to substitute its own judgment for that of the trial court where the trial court's decision is supported by substantial evidence." Barbarine v. Barbarine, Ky. App., 925 S.W.2d 831, 832 (1996).

After conducting a lengthy and careful analysis of the evidence pursuant to the statutory criteria, the trial court found that Velisa failed to qualify for an award of maintenance. Its findings are complete, supported by substantial evidence, and sufficiently specific to allow for adequate appellate review. There was no abuse of discretion in the court's denial of maintenance.

The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey H. Hoover
Jamestown, Kentucky

BRIEF FOR APPELLEE:

Katherine S. Sanford
Lexington, Kentucky