RENDERED: NOVEMBER 30, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001297-MR

GLORIA JEAN RAMEY — APPELLANT

v.

APPEAL FROM LAWRENCE CIRCUIT COURT
HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 00-CI-00217

JAMES ALLEN RAMEY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, VANMETER AND WINE, JUDGES.

VANMETER, JUDGE: Gloria Jean Ramey and James Allen Ramey filed a petition for dissolution of their marriage and a separation agreement in October 2000. Gloria appeals from the Lawrence Circuit Court, Family Division's judgment setting aside the parties' separation agreement and ordering that they divide the proceeds from their home insurance policy equally. For the following reasons, we affirm.

In this court's previous opinion in the matter now before us, we set forth the facts as follows:

> James and Gloria were married in Lawrence County, Kentucky, on February 8, 1968. On October 12, 2000, Gloria filed a petition in Lawrence Circuit Court seeking to dissolve the marriage. Filed with the petition was a separation agreement also executed by the parties on October 12, 2000. At the time of the filing of the petition, the parties had one minor child, Joseph Michael Ramey ("Joseph").
>
> On September 13, 2001, James filed a motion seeking to set aside the separation agreement as unconscionable. As a basis for the motion, James argued that the agreement failed to take into account his ownership interest in the marital residence, a truck, and a loader which he owned and operated. James apparently also argued that he suffered a stroke in June, 2000, which left him disoriented and unable to understand the agreement that he signed.
>
> The circuit court rendered preliminary findings of fact, conclusions of law, and decree of dissolution on December 20, 2001, with other matters reserved for later adjudication. The matter proceeded before the Domestic Relations Commissioner ("DRC"). On February 22, 2002, the court rendered an order denying James's motion to set aside the separation agreement, and disposing of other matters including custody and visitation. Though the order is signed by the circuit judge and contains language characterizing it as an order of the circuit court, it is also signed by the DRC and is treated by the parties and the court as the DRC's recommendations. On March 4, 2002, James filed exceptions to "the recommendations" (actually the February 22, 2002, order). The exceptions were overruled on April 16, 2003[.]

Ramey v. Ramey, No. 2003-CA-000836-MR, slip op. at 2-3 (Ky.App. Sept. 3, 2004) (footnote omitted).

After reviewing the issues relating to the conscionability of the parties' separation agreement, we held that the trial court applied an incorrect legal standard when holding that "a dissolution of marriage agreement can only be set aside on the basis of

incapacity or fraud. The law does not provide relief for the realization of a 'bad-bargain' subsequent to entering into an agreement." This, we held, was contrary to the Kentucky Supreme Court's holding in *Shraberg v. Shraberg*, 939 S.W.2d 330 (Ky. 1997), that "fraud, deceit, mental instability or the like, are not required to obtain invalidation of a separation agreement. What is required is a showing of fundamental unfairness as determined after considering the economic circumstances of the parties and any other relevant evidence[.]" As such, we reversed and remanded for further proceedings the trial court's order as it related to the legal standard and the conscionability of the separation agreement.

On remand, the trial court held a hearing, at which the parties indicated that the real estate formerly at issue in the matter had burned, and that now the disputed property consisted of the proceeds from the house insurance policy. After summarizing the evidence in its subsequent judgment, the trial court concluded that the parties' separation agreement was unconscionable because if it was enforced, James would receive only a pickup truck and some debt, while Gloria would receive a station wagon, $7,250 from the sale of a loader and logging equipment, and the entire $108,500 from the proceeds of the house insurance policy. Having set aside the separation agreement, the trial court concluded that James and Gloria should divide the proceeds from the house insurance policy equally. The trial court did not change the disposition of the remaining property. Thereafter, Gloria filed a motion to alter, amend, or vacate, which the trial court denied. This appeal followed.

First, Gloria argues that the trial court erred by exceeding the scope of our direction on remand as "the trial court should only have correctly defined the legal standard on which the first court's decision was made, not revisit[ed] the division." We disagree.

This court held on the first appeal that the trial court had applied the incorrect legal standard in the matter. By reversing and remanding as to the legal standard and the conscionability of the separation agreement, we clearly directed the trial court not only to substitute the correct legal standard, but also to apply the correct legal standard. Doing so necessarily involved reviewing the evidence in light of that standard. When the trial court reviewed the evidence in light of the correct legal standard and ultimately concluded that the parties' separation agreement was unconscionable, it then was necessary for the court to proceed with the matter and dispose of the parties' property. *See* KRS 403.180(3) (if a court finds a separation agreement unconscionable, "it may request the parties to submit a revised separation agreement or may make orders for the disposition of property"). Hence, the trial court did not exceed the scope of our direction on remand.

Next, Gloria argues that the trial court erred by failing to hold an evidentiary hearing on remand. We disagree.

As set forth above, the trial court held a hearing on remand prior to its entry of judgment. While the parties have provided us with no record of the events that transpired at the hearing, the trial court's judgment states that at the hearing "[t]he parties

indicated that no further evidence was to be taken[.]" James reiterates the point in his appellate brief, stating that at the hearing, "the parties stipulated to the facts below except for the one fact that had changed during the appeal. This additional fact was the destruction of the home and contents and the amount of insurance proceeds." Accordingly, it appears that Gloria was given an opportunity to present evidence at the hearing below but declined to do so. Thus, the trial court did not err by failing to hold an evidentiary hearing pursuant to Gloria's subsequent motion to alter, amend, or vacate the judgment.

The Lawrence Circuit Court, Family Division's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John C. Kirk
Paintsville, Kentucky

BRIEF FOR APPELLEE:

Michael T. Hogan
Louisa, Kentucky