

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001937-MR

ROBERT CLAY JAMES

APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 04-CI-00186

LORI JAMES (Now REVEL)

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: ABRAMSON, JUDGE; HUDDLESTON AND KNOPF, SENIOR JUDGES.¹

KNOPF, SENIOR JUDGE: The issue in this appeal is whether the trial court erred by failing to enforce a purported settlement agreement following a dissolution of marriage. We affirm.

Robert and Lori James were married in 1981. Three children were born of the marriage. At the time of dissolution in 2004, there remained only one minor child. The parties appeared before the domestic relations commissioner (DRC) on June 9, 2004,

¹ Senior Judges Joseph R. Huddleston and William L. Knopf sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and testified that they had entered into an agreement. The agreement was not written, but was read into the record. The transcript of the hearing revealed the agreement to be as follows:

The parties are going to share joint custody with equal timesharing and they agree to go to a mediator in regards to a parenting schedule... If they can't work it out... we're going to try and negotiate some parenting rules, but if not, then they can go to a mediator. As far as the property settlement agreement, the husband will receive the marital residence, each party will take the vehicle that's in their possession, the minor child will have possession of the vehicle she is currently using as gifted to her... Neither party will pay child support. The husband will pay a reasonable amount in cell phone bills for the child for communication purposes... The husband will also pay for the car insurance for the minor child. The wife will receive \$100,000 in retirement benefits at Toyota.

On June 14, 2004, the Scott Circuit Court entered a bifurcated decree dissolving the marriage and reserved the issue of property division for a later date. Specifically, the court stated that "a Separation and Property Settlement Agreement shall be drafted as read into the record before the Commissioner on June 9, 2004, to reflect the matters of distribution of marital and non-marital property and marital debts." Robert acknowledges that the agreement was never tendered to him nor signed by either party nor entered into the record.

Shortly after the dissolution decree was entered, the parties began to dispute the terms of the agreement regarding child custody. Lori then filed a motion for child support and custody and Robert filed a motion to enforce the agreement. Both parties testified regarding these issues at another hearing before the DRC on November 9, 2004.

The DRC found that there was no agreement on child custody because there was no meeting of the minds. Further, the DRC found that the entire settlement agreement had to be set aside because of the disagreement on custody. Robert filed exceptions to the circuit court, who affirmed the decision of the DRC that no agreement existed. This appeal follows.

Robert argues that the agreement as read into the record on June 9, 2004, was valid and enforceable. Further, he argues that it was error not to enforce the agreement absent a finding that the agreement was unconscionable.

KRS 403.180(1) promotes the amicable settlement of disputes between parties attendant upon their separation or the dissolution of marriage. Separation agreements are binding upon a trial court unless the court finds the agreement to be unconscionable. KRS 403.180(2). A settlement agreement is a final settlement of the parties' claims and is analyzed under the law of contracts. *Richey v. Richey*, 389 S.W.2d 914, 917 (Ky. 1965).

While Robert correctly notes that settlement agreements are binding unless they are unconscionable, the preliminary inquiry is whether an agreement existed at all. We cannot conclude that it was error for the trial court to find that no agreement existed. Specifically, the provisions of the agreement relating to child custody amounted to nothing more than an agreement to agree. "The parties are going to share joint custody with equal timesharing and they agree to go to a mediator in regards to a parenting schedule... If they can't work it out... we're going to try and negotiate some parenting rules, but if not then they can go to a mediator." An agreement is unenforceable for

indefiniteness if the resolution of material terms is left open to future negotiations unless a standard is provided from which a court can supplant the open terms should the negotiations fail. *Cinelli v. Ward*, 997 S.W.2d 474, 477 (Ky.App. 1998). The terms in the agreement are simply too indefinite to constitute an enforceable contract.

Additionally, we are not convinced that the agreement was intended to be a final and binding resolution to dispose of marital assets and custody issues.

Notwithstanding the parties' testimony that they had reached an agreement, the evidence of the parties' actions taken subsequent to the reading of the agreement into the record further confirms the lack of actual agreement as to the terms. Despite the provision stating that the parties would share joint custody with equal timesharing, Robert only took custody a handful of times in the months following the reading of the agreement.

The testimony of both parties at the hearing on November 9, 2004, indicates that they had vastly different conceptions of the equal timesharing arrangement. The lack of agreement on the custody provisions renders the entire agreement unenforceable because Kentucky follows the traditional "all or nothing" approach. *Id.* at 478. An agreement is either enforceable as a binding contract or it is unenforceable as something less. *Id.* Therefore, we cannot conclude the trial court erred by refusing to enforce any part of the agreement.

Accordingly, the order of the Scott Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Stephanie A. Litteral
THE LAW OFFICE OF STEPHANIE A.
LITTERAL, LLC.
Georgetown, Kentucky

BRIEF FOR APPELLEE:

Crystal L Osborne
STOLL, KEENON, OGDEN, PLLC.
Lexington, Kentucky