

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000690-MR

RICKY LONGO

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 03-CI-01442

DUANGDOA LIMJUMRUNTORN,
FORMERLY LONGO

APPELLEE

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: THOMPSON AND WINE, JUDGES; HENRY,¹ SENIOR JUDGE.

WINE, JUDGE: Ricky Longo appeals from an order of the Kenton Circuit Court denying his motion to modify a property settlement agreement which he entered into with Duangdoa Limjumruntorn (formerly Longo). Ricky argues that the trial court should have allowed him to reopen the agreement based upon Duangdoa's failure to comply

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

with a separate oral agreement and her retention of certain marital assets not addressed in the agreement. Finding no abuse of discretion, we affirm.

The relevant facts of this matter are as follows. Ricky and Duangdoa Longo were married in 1993 and separated in 2003. One child was born of the marriage. Duangdoa filed a petition for dissolution of the marriage on May 29, 2003, and the trial court entered a decree dissolving the marriage on October 12, 2004.

The decree also incorporated the parties' partial property settlement agreement, reserving the contested issues of custody and property division for later adjudication. In pertinent part, the settlement agreement provided that the marital residence would be sold and the equity divided equally between the parties. The agreement also set out the parties' debts and allocated them between the parties. On September 1 and September 19, 2005, the trial court entered orders resolving the remaining contested issues in this case, including a division of the equity in the marital residence.

Thereafter, on February 3, 2006, Ricky filed motions to modify the decree. He asserted that the parties had orally agreed to divide a tax refund received in early 2005, with the majority of the funds to be used to pay marital debts. Ricky alleged that Duangdoa had failed to pay those debts as agreed. Ricky further alleged that Duangdoa had taken money from a joint mutual fund without his permission. Based upon these actions, Ricky argued that the trial court should reconsider its allocation of proceeds from

the sale of the marital residence. The trial court denied the motion in an order entered on March 1, 2006. This appeal followed.

Ricky argues that the trial court clearly erred in refusing to modify its allocation of the proceeds from the sale of the marital residence. But once a property settlement agreement is incorporated into the decree, it becomes part of the judgment and may not be modified “unless the court finds the existence of conditions that justify the re-opening of a judgment” KRS 403.250(1). Ricky did not file his motion to modify pursuant to any section of CR 60.02. Consequently, there was no proper motion to re-open the decree before the trial court.

Furthermore, a property settlement agreement incorporated in a decree of dissolution is an enforceable contract which the family court may not disturb unless the contract is unconscionable. *Pursley v. Pursley*, 144 S.W.3d 820, 826 (Ky. 2004). *See also* KRS 403.180(2). The court may not find an agreement to be unconscionable “absent some showing of fraud, undue influence, overreaching or manifest unfairness.” *Pursley, supra*. The party claiming that a separation agreement is unconscionable has the burden of proving that the agreement is “manifestly unfair and inequitable.” *Peterson v. Peterson*, 583 S.W.2d 707, 711 (Ky.App. 1979). An agreement cannot “be held unconscionable solely on the basis that it is a bad bargain.” *Id.* at 712.

In this case, Ricky presented no reason why the issues regarding the division of the tax refund, the mutual fund, and the payment of debts could not have been presented to the trial court prior to entry of its final judgment. Likewise, he presented no

evidence showing that the newly-discovered evidence would render the settlement agreement unconscionable. Therefore, the trial court did not abuse its discretion by denying Ricky's motion to modify the agreement. *See Dull v. George*, 982 S.W.2d 227, 229 (Ky.App. 1998).

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

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Theodore Knoebber
Newport, Kentucky