

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000848-MR

JIMMY RAY SPARKMAN

APPELLANT

v. APPEAL FROM PENDLETON FAMILY COURT
HONORABLE DAVID E. MELCHER, JUDGE
ACTION NO. 04-CI-00163

CORY LYNN SPARKMAN (NOW BOWMAN)

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: KELLER AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Jimmy Ray Sparkman appeals from an order entered on his motion to compel compliance with the terms of the separation agreement incorporated into the decree dissolving his marriage to appellee Cory Lynn Sparkman (now Bowman). The order in question directed Cory to pay Jimmy Ray the sum of \$300.00 from the sale of a horse and equipment and to make a television and various tools available for pick-up

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

by Jimmy Ray's family. Because we are convinced that the trial court's order fully comports with the terms of the separation agreement, we affirm.

The parties were divorced by decree entered on October 5, 2004.

Incorporated into the decree was a separation agreement which contained the following paragraph pertinent to this appeal:

3b. Husband shall receive as his separate property, free from any claim whatsoever on the part of Wife, the following items: the big screen television, the proceeds from the sale of the horse named "Paintball" and the proceeds from the sale of the horse equipment, which said proceeds shall be deposited into Husband's account with the Grant County Detention Center; all property currently in his possession with the exception of those items awarded to Wife and listed in paragraphs 2a and 3a; his personal items and clothing; any and all savings or checking accounts currently in his name; and any and all retirement benefits and life insurance benefits that he is now entitled or may be entitled to in the future.

On October 5, 2005, Jimmy Ray filed a pro se motion asking the court to compel Cory to comply with the terms of the settlement agreement. Attached to the motion was an affidavit in which Jimmy Ray stated the following:

That on October 4, 2004 myself and my ex-wife signed an agreement of separation in this cause of action. Apart [sic] of the agreement was that she give the RCA big screen television to my brother Clinton Sparkman, and also that she give my tools to my brother, and that she sell "paitball" [sic] a horse, and its equitment [sic] which was a new saddle and bridle and put on my account at the prison the sum of \$1,200.00 dollars.

That since the agreement she has failed to comply with any of the agreement, she has not given my brother the RCA T.V., and has not given him my Tools, and has not paid me the \$1,200.00 as agreed by the parties.

That the value of my tools are [sic] at least \$1,000.00, and the value of the RCA T.V is \$800.00, and the value of the sell [sic]of the new saddle, bridle and horse was as mentioned \$1,200.00.

That I feel if she has not sold the horse and equitment [sic], and has not turned over the T.V. or my tools as mentioned and agreed upon as part of the settlement between us as signed before this court on October 4, 2004, than [sic] she owes me the sum of a total of \$3,000.00. And I am requesting the courts [sic] intervention in making her comply with the original orders and agreements, or I am seeking payment of three thousand dollars from the said respondent my ex-wife.

In her response to the motion to compel, Cory noted that the agreement simply assigned the television and tools to Jimmy Ray but placed no burden on her to deliver them to his brother. In fact, the agreement does not even mention Clinton Sparkman. Cory stated that she had not been contacted regarding these items by Clinton or any other member of Jimmy Ray's family. Regarding the horse, Cory stated that she had cared for the horse and all the expenses associated with her for approximately 14 months while trying to sell her, attaching a receipt for feed in the amount of \$336.00. The horse eventually sold for \$300.00 and thus she alleged there was no income to turnover from the sale of the horse. Finally, Cory alleged that Jimmy Ray's motion was an attempt to have improper contact with her:

5. The Respondent was charged with numerous felony offenses in which either myself or my children were the victims. He was found guilty by a jury of Burglary, First Degree, Violation of a DVO, and Assault, Fourth Degree and was given a sentence of twenty (20) years. At a subsequent trial, he was found guilty by a jury of Sodomy, First Degree and four counts of Sexual Abuse, First Degree and was given a

sentence of twenty-five (25) years. Furthermore, the Petitioner obtained a DVO against the Respondent, restraining the Respondent from any contact or communication until June 2006. The filing of this motion is merely an attempt by the Respondent to have further contact with me.

After a hearing at which only Cory and her counsel were present, the trial court entered an order directing Cory: 1) to make the television and tools available to an appropriate family member designated by Jimmy Ray; and 2) to pay the amount of \$300.00 into Jimmy Ray's prison account. Jimmy Ray appeals from that order alleging that the trial court abused its discretion in failing to appoint guardian ad litem counsel or failing to make provision for him to participate in the hearings on his motion. We disagree.

KRS 403.180(5) provides that “[t]erms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.” It is well settled that construction and interpretation of a written agreement are matters of law to be decided by the court. *Cinelli v. Ward*, 997 S.W.2d 474 (Ky.App.1998). Because the terms of the separation agreement that Jimmy Ray seeks to enforce are clear and unambiguous, he suffered no due process deprivation by the trial court's failure to appoint a guardian ad litem or to make arrangements for him to attend the hearings on the motion.

The plain language of the separation agreement supports the decision of the trial court to require Cory to deposit the proceeds from the sale of the horse into Jimmy Ray's prison account and to make the television and tools available to an appropriate

relative of his choice. It does not require more. There is no mention of a specific amount of money that was to be received from the sale of the horse, nor any requirement that Cory deliver the television and tools to Clinton Sparkman. Cory supported her response to Jimmy Ray's motion with a signed receipt from the buyer showing the amount he paid for the horse and equipment. She also submitted proof that it had cost her more to feed the horse for 14 months than she received for the sale of the animal, demonstrating that she was using her best efforts to effectuate a sale. Considering that proof, we are actually of the opinion that the trial court may have been overly generous in its award of \$300.00 to Jimmy Ray.

In sum, it is clear that the trial court enforced the agreement according to its plain terms and afforded Jimmy Ray an opportunity to substantiate his claims. That is all the due process to which he is entitled under the circumstances. The judgment is in all respects affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Jimmy Ray Sparkman, Pro Se
Sandy Hook, Kentucky