

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000083-MR

LINDA SUE BAKHIT

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 97-CI-00171

CYRUS E. BAKHIT

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, EMBERTON, AND HUDDLESTON, JUDGES.

BUCKINGHAM, JUDGE: Linda Sue Bakhit appeals from an order and a supplemental decree of dissolution of marriage entered by the McCracken Circuit Court subsequent to her divorce from Cyrus E. Bakhit. The principal issue involves whether or not the trial court should have set aside the settlement agreement entered into by the parties before the entry of the order and supplemental decree. Finding no error in the trial court's refusal to set aside the agreement, we affirm.

On February 20, 1997, Cyrus, a physician at Pain Management Center in Paducah, Kentucky, filed a petition for dissolution of marriage in the McCracken Circuit Court. On July

29, 1997, the trial court entered an interlocutory decree dissolving the marriage of Cyrus and Linda. After an extensive period of discovery and hearings before a domestic relations commissioner (DRC), a final hearing was set for June 24-25, 1999.

On June 22, 1999, the DRC held a pretrial conference with the attorneys that resulted in renewed settlement negotiations. On June 23, 1999, the day before the final hearing was to begin, Linda met with her attorney at his office to review the final settlement offer made by Cyrus. She signed off on a letter laying out the terms of the settlement agreement and then went with her attorney to the courthouse where a videotape was made in which she indicated that she had voluntarily signed the agreement. Linda further stated that she understood and accepted the terms of the agreement.

After leaving her attorney, Linda allegedly went home and informed family members that she was going to commit suicide. Later that evening, she voluntarily signed herself into Lourdes Hospital. She remained hospitalized there until July 16, 1999, when her insurance ran out.

On June 24, the day after Linda signed the settlement agreement, her sister from Texas and her nephew from North Carolina met with the DRC. They informed the DRC that Linda would be obtaining new counsel, and the DRC provided a list of five names of local attorneys who practiced domestic relations law.

On July 2, Cyrus filed a motion to have the settlement agreement entered by the court. On July 6, Linda's attorney filed

a motion to withdraw as her counsel, alleging that the attorney-client relationship was broken. On July 13, the DRC met with the attorneys and set Cyrus's motion to enter the settlement agreement for a hearing on August 11. On July 16, the trial judge entered an order granting Linda's attorney's motion to withdraw. The court indicated in the order that Cyrus would be allowed to proceed against Linda at the August 11 hearing regardless of whether or not she had retained new counsel. The record indicates that the attorney's motion to withdraw, as well as the court's order granting the motion, were mailed to Linda at her address.

On August 5, Stephani Allen, Linda's private nurse, appeared at the circuit clerk's office, presented her power of attorney from Linda, and attempted to withdraw money being held there for Linda. After the clerk informed Allen that the funds could not be released without Linda's presence, the clerk and Allen visited the trial judge. The trial judge was led to believe that Linda was in North Carolina, and he informed Allen that he would not release the funds without Linda's presence. Approximately one hour later, Linda appeared with Allen at the clerk's office to sign for the money.

On August 9, Linda's new attorney entered her appearance on the record and filed a motion for a continuance of the August 11 hearing and a response to Cyrus's motion to enter the settlement agreement. In an affidavit supporting her response to Cyrus's motion to enter the settlement agreement, Linda alleged that her previous attorney had coerced her into

signing the agreement and that she had not been competent to sign it due to depression and thoughts of suicide. Cyrus's motion to enter the settlement agreement came before the DRC for hearing as scheduled on August 11. Linda was not present at the hearing. The DRC was informed that her nurse, Stephani Allen, had been required to return to her home in Texas and that Linda had returned to Texas with her. Acknowledging that Linda's attorney likely would not have been able to prepare for the hearing in two days, the DRC nonetheless denied the continuance motion on the grounds that Linda had been aware of the hearing date for some time and had indicated to the DRC through her relatives on June 24 that she would be replacing her attorney.

The DRC subsequently reviewed the videotape in which Linda acknowledged that she had voluntarily signed the letter laying out the terms of the settlement agreement, that she understood the terms, and that she accepted them. The DRC then advised the parties that the agreement should be enforced and directed Cyrus's attorney to draft a DRC's report incorporating the terms of the agreement. Subsequent to the hearing on August 11, the DRC decided not to sign the draft report submitted by Cyrus. As a result, the attorneys and the DRC appeared before the trial judge on September 2 for instructions. The judge instructed the DRC to act on the motion presently before him and decide whether to accept or reject the settlement agreement based on the record as it existed following the August 11 hearing. The judge further noted that while he could not state if Linda had been competent or not when she signed the agreement, he assumed

that the issue would be raised following the DRC's report. The judge indicated that he would have a hearing on her competence when the issue was raised.

The DRC's report was filed on September 10, and Linda filed exceptions on September 17. On November 19, a hearing was held before the trial court on Linda's exceptions and Linda was permitted to testify concerning the circumstances surrounding her signing the settlement agreement.<sup>1</sup> On December 10, the trial court entered an order which provided in pertinent part that:

4. The Court further finds that Respondent, Linda Sue Bakhit, knowingly, freely, and voluntarily entered into the settlement agreement of June 23, 1999. The Court finds that there is no evidence that she was incompetent at the time of the agreement or that she was incapable of understanding the terms of the agreement. The Court specifically finds that Linda Sue Bakhit entered the settlement agreement on June 23, 1999 with open eyes, with full disclosure of the effect of accepting the agreement, and that she understood the terms of the bargain.
5. The Court further finds that Respondent's claim that she was coerced into entering the agreement by her former counsel, Hon. Mark Bryant, is without merit. The Court finds that there is no credible evidence whatsoever that Linda Sue Bakhit was coerced or forced to enter into the agreement.
6. The Court notes that in making these findings, it has reviewed the videotape of the proceedings of June 23, 1999, wherein Respondent, Linda Sue Bakhit, testified in open court that she was entering into the agreement voluntarily

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<sup>1</sup> According to the circuit clerk's certification of the record, there is no tape of this hearing.

and that she and [sic] understood and accepted the terms of the agreement.

7. The Court has thoroughly reviewed the entire record in this cause and finds that the agreement entered into by Respondent is not unconscionable or in any way unfair to her. In light of the limited duration of the marriage and the limited assets brought into the marriage, the Court finds that the Petitioner's obligation to pay maintenance to Respondent as set forth in the settlement agreement is substantial and generous. Accordingly, the Court finds that the settlement agreement of June 23, 1999, as set forth in the Commissioner's Report is not unconscionable and that it is fair and reasonable to both parties.

Following the entry of the supplemental decree incorporating the terms of the settlement agreement, this appeal by Linda followed.

Linda's first argument is that the trial court erred in enforcing the settlement agreement despite her testimony that she was incompetent and subject to coercion when she signed the agreement. As we have noted, the trial court specifically found that there was no evidence that Linda was incompetent when she signed the agreement and no credible evidence that she was coerced or forced to enter into it. These determinations are findings of fact that are subject to CR<sup>2</sup> 52.01. That rule provides in pertinent part that

Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a commissioner, to the extent that the court adopts them,

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<sup>2</sup> Kentucky Rules of Civil Procedure.

shall be considered as the findings of the court.

CR 52.01. Furthermore, "the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support the findings." R.C.R. v. Com. Cabinet for Human Resources, Ky. App., 988 S.W.2d 36, 38 (1999). The videotape of Linda's statement that she voluntarily signed the letter laying out the terms of the settlement agreement, that she understood the terms, and that she accepted them are substantial evidence to support the trial court's findings in this regard.<sup>3</sup> Therefore, we cannot say that the court's findings were clearly erroneous and subject to being set aside.

Linda's second argument is that the DRC erred in denying her motion to continue the August 11 hearing because she was unaware of the hearing and was not properly notified that her attorney had withdrawn from the case. She further argues that a continuance should have been granted because her attorney had been retained only two days before the hearing. To again review the facts, we note that her previous attorney's motion to withdraw was mailed to Linda's address as was the court's July 16 order granting the motion. We again note that Linda's relatives met with the DRC on June 24 and informed him at that time that Linda would be retaining a new attorney to represent her. Linda claims, however, that she was in Lourdes Hospital and then in

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<sup>3</sup> The record contains only the initial portion of this testimony. However, the record reflects that both the DRC and the trial judge reviewed the full tape prior to making their respective findings.

Texas and did not receive her attorney's motion or the court's order until her return from Texas on August 5.

"The decision whether to grant or to deny a motion for continuance lies within the sound discretion of the trial court." Ky. Farm Bureau Mut. Ins. Co. v. Burton, Ky. App., 922 S.W.2d 385, 388 (1996). Based on the facts stated above, the DRC denied Linda's motion for continuance. Based on those facts, we conclude that the DRC acted within his discretion in denying the motion.

Linda's third and final argument is that the denial of the continuance motion by the DRC effectively denied her the opportunity to present medical evidence to support her claim that she was incompetent when she signed the settlement agreement. Although she acknowledged that she was allowed to testify concerning this matter before the trial judge at the hearing on her exceptions to the DRC's report, she cites Haley v. Haley, Ky. App., 573 S.W.2d 354 (1978), and asserts that the trial court would not have allowed her to present medical evidence to support her claim had she sought to do so<sup>4</sup>. See id. at 356. The settlement agreement was binding on the court unless the court found it to be unconscionable based on the economic circumstances of the parties or other relevant evidence. KRS<sup>5</sup> 403.180(2). Linda had the opportunity at the August 11 hearing to present

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<sup>4</sup> CR 53.06(2) provides in part that after a hearing on exceptions to a commissioner's report, the court "may adopt the report, or may modify it, or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions." (Emphasis added.)

<sup>5</sup> Kentucky Revised Statutes.



relevant evidence to persuade the court to reject the agreement. She failed to present such evidence at that time, and the court was within its discretion in denying her motion for continuance. Therefore, we conclude that the DRC and the court did not erroneously deny Linda the opportunity to present medical evidence.

The order and supplemental decree of the McCracken Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Anne M. Smith  
Paducah, Kentucky

BRIEF FOR APPELLEE:

Brian S. Katz  
Paducah, Kentucky