

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001463-MR

ANTONIA FULLER

APPELLANT

v. APPEAL FROM LEWIS CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 05-CI-00263

KENNETH FULLER

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ABRAMSON, JUDGE: Antonia Fuller appeals from a July 11, 2006 order of the Lewis Circuit Court denying, in accordance with a domestic relations commissioner's recommendations, her motion for sanctions and maintenance arrearages against her former husband, Kenneth Fuller. Antonia contends that the trial court erred by modifying on insufficient grounds the maintenance provision included by agreement in the parties'

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

divorce decree. Convinced that the trial court did not modify the agreement, but interpreted it, and further convinced that the court's interpretation was correct, we affirm.

The parties' sixteen-year marriage was dissolved by decree of the Greenup Circuit Court in December 1998. At that time the only child of the marriage, a son, was fourteen years old. The decree incorporated a "Settlement Agreement," prepared by Antonia's counsel, which provided in pertinent part as follows:

2. That the Respondent [Kenneth] shall pay to the petitioner [Antonia], the sum of \$325.16 per month as child support. However, the Respondent will continue to cause his Navy Retirement check to be directly deposited into Petitioner's checking account, said check being in the approximate amount of \$737.00 per month, which said amount will stand for payment of child support on behalf of the parties' infant child and maintenance to the Petitioner herein. Further, that the Respondent will provide health insurance coverage for the parties' infant son, and the parties' adult daughter.²

Pursuant to this agreement, Kenneth duly had his Navy retirement checks transferred to Antonia until April 2002, when their son became eighteen years old. In May 2002, Kenneth ceased to pay child support, ceased to have his Navy retirement checks transferred to Antonia, and began instead to pay Antonia \$400.00 per month as maintenance. Those payments continued through August 2005, when, apparently upon the advice of counsel, Kenneth repudiated any further maintenance obligation. When Kenneth failed to make the September 2005 payment, Antonia brought her present motion to have him held in contempt of the 1998 Settlement Agreement and for

² In fact, the daughter is Antonia's child from a prior relationship.

maintenance arrearages. Kenneth then moved to have his maintenance obligation terminated.

Following transfer to the Lewis Circuit Court, the matter was tried before a domestic relations commissioner in April 2006. Kenneth presented evidence tending to show that Antonia--whose \$64,000.00 income as a supervisory nurse for a dialysis provider substantially exceeds his \$46,000.00 combined income as a Maysville police detective and a naval retiree--was no longer entitled to maintenance. The commissioner did not reach the propriety of altering the maintenance provision, however, because he concluded that, under the terms of the Settlement Agreement, Kenneth's maintenance obligation had expired along with his child support obligation in April 2002. Because in the commissioner's opinion Kenneth had not owed maintenance since long before he ceased to pay it, he recommended that Kenneth not be found in contempt or assessed any arrearages. Antonia filed exceptions to the commissioner's report, but neither she nor her counsel appeared at the hearing to address them. Soon thereafter, on July 11, 2006, the trial court entered its order adopting the commissioner's report in its entirety, and so in effect denied Antonia's motion and ruled that her entitlement to maintenance had expired.

Appealing from that order, Antonia contends that the trial court erred by terminating her maintenance without making the finding required under KRS 403.250, *i.e.*, that the maintenance agreement had become unconscionable owing to the parties' substantially changed circumstances. As noted, however, the trial court did not purport to

“alter” Antonia’s maintenance pursuant to KRS 403.250. It ruled, rather, that by its own terms the maintenance agreement expired in April 2002. Because we concur in this construction of the Settlement Agreement, we affirm.

KRS 403.180 authorizes divorcing spouses to enter into written separation agreements containing provisions for maintenance; property disposition; and child custody, support, and visitation. Those agreements deemed conscionable by the trial court may be incorporated into the dissolution decree, and thereafter may be enforced both as judgments and as contracts. KRS 403.180(5). When called upon to enforce such an agreement, courts employ the ordinary rules of contract construction in an effort to give effect to the parties’ expressed intentions. *Pursley v. Pursley*, 144 S.W.3d 820 (Ky. 2004); *Cantrell Supply, Inc. v. Liberty Mutual Insurance Company*, 94 S.W.3d 381 (Ky.App. 2002). Generally, those intentions are to be drawn from the agreement itself, *3D Enterprises Contracting Corporation v. Louisville and Jefferson County Metropolitan Sewer District*, 174 S.W.3d 440 (Ky. 2005), and, if construction is necessary, the agreement is to be “construed strongest against the party who drafted and prepared it.” *Perry v. Perry*, 143 S.W.3d 632, 633 (Ky.App. 2004) (citation and internal quotation marks omitted). “Generally, the interpretation of a contract, including determining whether a contract is ambiguous, is a question of law for the courts and is subject to *de novo* review.” *3D Enterprises Contracting Corporation v. Louisville and Jefferson County Metropolitan Sewer District*, 174 S.W.3d at 448 (citation and internal quotation marks omitted).

Here, although the parties' Settlement Agreement does not expressly provide for the expiration of either Kenneth's child support obligation or his maintenance obligation, the trial court, through the domestic relations commissioner, ruled, in effect, that the agreement implicitly contemplated that both obligations would cease when the parties' son became eighteen years old. We concur in this reading of the agreement. As the trial court noted, the agreement was prepared by Antonia, and so terms not clearly expressed must be construed against her. The agreement provides that child support is to be paid "on behalf of the parties' infant child," and thus implies that child support, as is usually the case, would cease when the child ceased to be an infant. The agreement also ties the payment of maintenance to the payment of child support by directing that Kenneth's Navy retirement check be used to satisfy both obligations. It is reasonable to infer that the maintenance obligation was to cease at the same time the child support obligation did, for otherwise the agreement would also have provided for a different, post-child-support method of payment. We thus agree with the trial court that by its terms the parties' maintenance agreement expired in April 2002, when their son reached his eighteenth birthday. The trial court was not obliged, therefore, to consider whether the lapsed maintenance agreement was unconscionable, and it did not err by denying Antonia's motion for sanctions and arrearages. Accordingly, we affirm the July 11, 2006 order of the Lewis Circuit Court.

DIXON, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, DISSENTS AND FILES SEPARATE
OPINION.

ROSENBLUM, SENIOR JUDGE, DISSENTING: I respectfully dissent from the majority opinion which concludes that it is reasonable to infer that the maintenance obligation was to cease at the same time that the child support obligation terminated. As the agreement contains no language specifying when maintenance would terminate, I interpret this as an open-ended maintenance obligation. The fact that the agreement does not provide a different method for payment of the maintenance obligation following cessation of child support does not imply that the maintenance obligation terminated at the same time that the child support obligation ceased. The appellant's maintenance obligation may only be modified upon satisfying the mandates of KRS 403.250. Accordingly, I would reverse and remand this case to the trial court with directions to enter findings in conformity with KRS 403.250.

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