

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000601-MR

ROBERT W. KENISON

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE MARCUS L. VANOVER, JUDGE
ACTION NO. 11-CI-01379

FRANCES E. KENISON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MAZE, AND STUMBO, JUDGES.

DIXON, JUDGE: Robert W. Kenison appeals a post-decree order of the Pulaski Circuit Court enforcing the marital separation agreement between Robert and his former wife, Frances E. Kenison. We affirm.

Robert and Frances were divorced pursuant to a decree entered by the Pulaski Circuit Court on June 26, 2012. The decree incorporated the terms of the parties' separation agreement, which provided for the equal division of a Hilliard

Lyons annuity account. Pursuant to the agreement, Robert, a Florida resident, specifically consented to the jurisdiction of the Pulaski Circuit Court for the divorce proceedings. Further, the agreement provided that if the parties could not resolve future disputes through negotiation or mediation, the Pulaski Circuit Court would decide the disputed matter.

In January 2015, Frances filed a motion to compel Robert to divide the Hilliard Lyons account pursuant to the separation agreement. Out of state counsel for Robert contacted Frances's attorney to request a continuance, and the hearing date was continued for two weeks. The court held a hearing on March 13, 2015, and Robert failed to appear. E-mail correspondence tendered to the court by Frances's attorney indicated that Robert believed Frances had not effected proper service of process upon him pursuant to CR 4.04(8).

The court rendered a judgment ordering Robert to pay Frances for her share of the Hilliard Lyons account pursuant to the settlement agreement. The court's findings of fact stated, in pertinent part:

2. That the Petitioner, Robert Kenison, received notice of these proceedings and that counsel, on his behalf, contacted counsel for the Respondent to request an additional continuance and to object to sufficiency of notice.
3. That Kentucky Rule of Civil Procedure 4.04(8) does not apply as the Motion to Compel and the Motion to Redocket and Re-Open are not 'initiating documents.' As such, personal service is not required.

Robert now appeals the post-decree order entered by the Pulaski Circuit Court, alleging the trial court lacked jurisdiction to reopen a final judgment and that there was insufficient service of process. After careful review, we conclude Robert's arguments are without merit.

Pursuant to KRS 403.180(1), the parties to a dissolution proceeding are free to enter into a separation agreement. "Terms 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." KRS 403.180(5).

"Absent an ambiguity in the contract, the parties' intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence." *Cantrell Supply, Inc. v. Liberty Mutual Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

The separation agreement indicates Robert consented to the jurisdiction of the Pulaski Circuit Court and that the parties could seek enforcement of the agreement through the court if there was a future dispute. Further, Robert had notice of the motion to compel, as his attorney contacted Frances's counsel on his behalf to request a continuance. Despite Robert's arguments to the contrary, the terms of the parties' separation agreement conferred personal jurisdiction over him to the Pulaski Circuit Court; accordingly, the trial court did not err by ordering Robert to comply with the agreement.

For the reasons stated herein, we affirm the judgment of the Pulaski Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joel R. Smith
Jamestown, Kentucky

BRIEF FOR APPELLEE:

Heidi Schultz Powers
Somerset, Kentucky