

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000035-MR

STELLA FAYE DOUGLAS

APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM MAINS, JUDGE
ACTION NO. 95-CI-00182

SAMMY DOUGLAS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. This is an appeal by Stella Faye Douglas (Douglas) from an order of the Rowan Circuit Court entered December 1, 1997, adopting the October 22, 1997, report and recommendations of the Domestic Relations Commissioner (DRC) regarding distribution of the parties' property pursuant to their separation agreement. We affirm.

The parties were divorced on October 24, 1995, by decree of dissolution, which incorporated the parties' prior separation agreement (Agreement) entered August 30, 1995, and was drafted by appellant's attorney. Under paragraph seven of the Agreement the appellee was to receive the parties' marital

residence along with 12 other enumerated items including the woodworking and shop tools. Under paragraph eight of the Agreement, Douglas was to receive all of her personal belongings and effects, the 1992 Toyota and "all antiques in the marital home."

Thereafter, a dispute arose between the parties regarding which items constituted antiques that Douglas could remove from the marital residence. With the parties unable to resolve this issue, Douglas filed a motion in the Rowan Circuit Court for an order directing the appellee to comply with the terms of the Agreement. As part of her motion, Douglas attached a list of 28 items she claimed she was entitled to because they were antiques. Hearings were held before the DRC on October 7, 1996, and on July 18, 1997, regarding the antiques issue.

The DRC made recommendations to the trial court on October 22, 1997, indicating that certain items on Douglas' list, specifically the chandelier and old school light, while antiques, were fixtures of the house and therefore the property of the appellee under the terms of the Agreement. The DRC also recommended to the trial court that appellee receive the tobacco cutter, a two handled saw and anvil pursuant to paragraph seven of the Agreement designating that the appellee receive the woodworking and shop tools. The DRC further recommended that appellee receive an oak picture frame and black plaster frame, contrary to Douglas' testimony that these items were antiques, because they were gifts from the appellee's family and thus non-marital property.

Further at the July 18, 1997, hearing, the DRC recommended that various items be allocated to the appellant. These items were omitted from the DRC's October 22, 1997, recommendations by mistake. Douglas also claims that the appellee is in possession of some Beatles and old 45 records that she owned prior to the marriage, which constitute her non-marital property. Appellee claims he is not in possession of these items. Both parties filed timely exceptions and objections to the DRC recommendations. However, the trial court adopted the report and recommendations on December 1, 1997, with only one small change that does not effect this appeal.

The trial court is vested with broad discretion in domestic matters and this Court will not interfere with its decisions unless that discretion is abused. Sommerville v. Sommerville, Ky., 339 S.W.2d 940 (1960). A separation agreement is a mere contract between spouses for all intents and purposes. "Questions relating to the construction, operation and effect of separation agreements between a husband and wife are governed, in general, by the rules and provisions applicable to the case of other contracts generally." Richey v. Richey, Ky., 389 S.W.2d 914 (1965) (citing 17A Am.Jur., § 904, Page 92). It is important to note that it was Douglas' attorney who drafted the ambiguous Agreement that is at the center of this controversy. It is a tenant of contract law that contracts are construed more strongly against the drafting party. Bays v. Mahan, Ky., 362 S.W.2d 732 (1962); Wiggins v. Schuber Realty & Inv. Co., Ky. App., 854 S.W.2d 794 (1993).

In the present case the Agreement stated only that Douglas was to receive "all antiques in the marital home." The Agreement did not define "antique" nor did it list the items that Douglas should receive, although it was possible for Douglas to have listed these items in the Agreement as evidenced by the list of 28 "antiques" she attached to her motion. In construing the Agreement more strongly against Douglas, we cannot say that the trial court abused its discretion by awarding the appellee the chandelier and old school house light according to the law of fixtures. An item is considered a fixture when it is annexed to the realty, used for the purpose to which it is attached and intended to remain with the realty. Tarter v. Turpin, KY., 291 S.W.2d 547 (1956). The Agreement allocated the realty to which the chandelier and old school house light were affixed to the appellee. Therefore, the appellee is entitled to these items.

Furthermore, we cannot say that the trial court abused its discretion in awarding the appellee the tobacco cutter, two handled saw and anvil pursuant to paragraph seven of the Agreement designating that the appellee would receive the woodworking and shop tools. While these items are certainly woodworking or shop tools, there is no credible evidence in the record that these items are also antiques. Finally, we will not reverse the trial court's order allocating the picture frames and Beatles and old 45 records to the appellee as there is no credible evidence in the record to support such action. The trial court did not abuse its discretion in the distribution of these items to appellee.

It appears that both parties agree that the old brass key collection, walnut floor lamp, mirror matching the oak dresser, gold table lamp, brass bed warmer and pole light, were mistakenly omitted from the DRC's report and recommendations to the trial court. In fact, appellee has admitted such in his brief and offered to return those items to Douglas. We feel Douglas should accept the appellee's offer to return these items or seek additional relief from the trial court regarding same.

For the foregoing reasons, the decision of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kaye L. Leighton
Mt. Sterling, KY

BRIEF FOR APPELLEE:

George M. Hogg
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