RENDERED: July 2, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003211-MR

CHRIS L. HEADY — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 96-CI-000612

JENNIFER F. HEADY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: DYCHE, GUIDUGLI, AND MCANULTY, JUDGES.

DYCHE, JUDGE: Chris L. Heady and Jennifer F. Heady were married in March 1992 and separated in July 1996. The couple had two daughters, Julia Grace and Anne Marie. In order to avoid prolonged dissolution proceedings, the parties entered into a separation agreement wherein Jennifer received the marital home and all its furnishings, the Chrysler van she drove, and a lump sum settlement of $300,000.00. The couple further agreed to joint custody of the children, with Jennifer having primary physical custody and $3,627.00 per month in child support. Chris received the condominium in Florida, his Jeep Cherokee and Porsche 924, and over $4,000,000.00 in investments. The

agreement was drafted by attorney Sam Hayward, who represented Jennifer.

Chris was not represented by counsel when he signed the document on January 3, 1997. He retained counsel the following day and immediately moved to have the instrument set aside as unconscionable. His accompanying affidavit claimed that he was "fraudulently induced" and "pressured" into signing the agreement. Chris supported these allegations by informing the trial court that he had been diagnosed with obsessive compulsive disorder and under the care of a psychiatrist for some time. Jennifer, knowing this, supposedly took advantage of appellee's impaired mental state and coerced him to sign the agreement despite the fact that the couple had executed an antenuptial agreement prior to their marriage.

The trial court held an extensive hearing on the matter. Its ultimate decision was that the separation agreement was not unconscionable and would therefore be enforced with the exception that child support was reduced to $3,200.00 per month. Chris appeals, making five arguments. We affirm.

Appellant first complains that the trial court erred in failing to set aside the separation agreement. Chris insists that he "simply did not possess sufficient mental and emotional capacity to knowingly enter into a valid agreement with his wife." Chris relies heavily on the deposition of Dr. Gary Goldblatt, his psychiatrist, which he claims was uncontradicted. The trial court was not convinced of appellant's impairment, and neither are we.

An examination of Dr. Goldblatt's testimony reveals that it was not so forceful as appellant would have us believe. For example, when asked about Chris's medication, (viz., Zoloft, an antidepressant), Dr. Goldblatt stated that the level of the prescribed amount would be directly related to appellant's level of functioning. The following exchange occurred between appellee's counsel and Dr. Goldblatt:

> Q: When you saw [appellant] in December of 1996, did he appear to be coping at a reasonable level?
>
> A: . . . . I'm going to answer yes. He was coping with his situation at a reasonable level. It was clear enough to me that he was distressed.
>
> Q: And did you increase his medication when you saw him in December of '96?
>
> A: I did not.

Dr. Goldblatt admitted that all divorces are stressful. Moreover, in spite of claiming that he was legally incompetent in December of 1996 (when the agreement was drafted and then discussed between the parties) and in early January of 1997 (when he signed it), appellant did not seek another appointment with Dr. Goldblatt until the following March. The trial court analyzed all evidence pursuant to the "unconscionable" standard enunciated in KRS 403.180(2) and Shraberg v. Shraberg, Ky., 939 S.W.2d 330 (1997). We find no abuse of discretion in the trial court's determination that the separation agreement was enforceable. KRS 403.180(2).

Chris next argues that the separation agreement fails to indicate that the parties had reached a joint custody

arrangement. In this vein Chris insists that the section pertaining to custody "is a very thinly disguised sole custody award giving Mr. Heady mere rights of visitation"; appellant requests that the language of the agreement "be changed to reflect such a joint custody determination." We cannot agree with appellant's characterization of the custody arrangement. He and his ex-wife share joint custody of the daughters. The fact that Jennifer has primary physical custody does not affect Chris's legal rights as joint custodian.

The third issue concerns calculation of the monthly amount of child support. There is no dispute that Chris's monthly gross income exceeds the uppermost level in the statutory guidelines. See KRS. 403.212(6). He would have the court accept his own calculation of $2,768.00, rather than the court's assessment of $3,200.00.

KRS 403.212(5) states: "The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table." Chris has again failed in his burden of proving that the trial court abused its discretion. We affirm the amount of monthly child support.

Appellant fourthly argues that the trial court "exceeded the relief requested by the parties." Appellant does not elaborate on this topic other than to state that he merely wanted the agreement set aside and appellee wanted it enforced. The trial court did enforce the agreement with the exception of reducing the agreed amount of child support by $427.00 per month

(a result favorable to appellant). We fail to see the error in the trial court's actions.

Chris's fifth assertion, that the trial court erred in determining that Jennifer would have been entitled to maintenance, is without merit. As appellee points out, the trial court's analysis regarding maintenance was merely done for the purposes of ascertaining whether the agreement was conscionable and not manifestly unfair. We find no error in this analysis.

The judgment of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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