

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001489-MR

ARMINIA AGEE FITE

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY NOBLE, JUDGE
ACTION NO. 88-CI-02497

HARRY SANFORD FITE, JR.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, EMBERTON, and GUIDUGLI, Judges.

COMBS, JUDGE: The appellant, Arminia Agee Fite (Arminia), appeals from the order of the Fayette Circuit Court denying her motion to set aside her Property Settlement Agreement with her former husband, Harry Sanford Fite, Jr. (Harry), the appellee. Having reviewed the record and finding no error, we affirm the order of the circuit court.

On September 9, 1988, the eleven-year marriage of the parties was dissolved by order of the Fayette Circuit Court. The court awarded Arminia custody of their two minor children. As to the division of the marital property, the court approved and incorporated by reference a Property Settlement Agreement

executed by Arminia and Harry. Pursuant to the agreement, Arminia received the marital residence and all interest in her retirement benefits; she assumed responsibility for the mortgage and one of the parties' two cars. Harry was awarded the other car, all interest in his retirement benefits, and all interest in a stock option plan with his employer, Proctor & Gamble.

On March 18, 1996, Arminia filed a motion to set aside the agreement, contending that it was unconscionable in that there was a disproportionate disparity in the value as to the properties which each had received under the agreement. Specifically, Harry received all interest in the stock option plan with his employer, which Arminia alleged was valued at \$58,251.16 as of the time of the dissolution. Conversely, she was given all interest in the marital residence, which at the time of the dissolution had a negative equity value of -\$4,503.86 (the assessed value of the house was \$60,700.00 and the unpaid balance of the mortgage on the house totaled \$65,203.86). Arminia asserted that she was not represented by an attorney during the dissolution proceedings and that she had not claimed any interest in the stock option plan based on Harry's claim that the stock option plan was not marital property and that thus she could not claim any interest in the stock. On January 22, 1997, the court denied her motion. Arminia filed a motion for reconsideration, which the court denied on May 19, 1997. This appeal followed.

Arminia argues on appeal that the court erred in failing to set aside the parties' settlement agreement on the

basis of unconscionability. She also maintains that the court had failed to give proper consideration to the issues raised in her motion when it found that she had failed to prove fraud or misrepresentation. However, she did not raise these issues in her motion for setting aside the agreement; she admits that she raised only the issue of whether the settlement agreement was unconscionable.

KRS 403.250(1) provides, in pertinent part, that the provisions of a dissolution decree regarding property dispositions "may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state." CR 60.02 provides relief from final judgment on specific, narrow grounds:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

In this case, Arminia filed her motion approximately eight years after entry of the court's decree. She maintains that she is not asserting fraud or misrepresentation, and it appears that CR 60.02(f) is the only ground of relief upon which she might rely. Thus, she must demonstrate the existence of a reason of an extraordinary nature justifying relief -- a provision which has been narrowly construed by the courts. Due to the "desirability of according finality to judgments, this clause must be invoked only with extreme caution, and only under most unusual circumstances." Cawood v. Cawood, Ky., 329 S.W.2d 569, 571 (1959).

In denying Arminia's motion to set aside the settlement agreement, the court found: (1) that she had produced no evidence that Harry had made any misrepresentations to her regarding the stock option plan and (2) that she had failed to establish any grounds for setting aside the settlement agreement. The circuit court also noted that the settlement agreement had been found to be equitable at the time of the dissolution and that the parties had not filed any objections to the agreement. We find no error. As an appellate court, "[w]e are constrained from overturning the findings of the trial judge unless they are clearly erroneous." Aton v. Aton, Ky. App., 911 S.W.2d 612, 615 (1995). Moreover, the court's order indicates that it carefully considered not only the issues of fraud and misrepresentation but also any other grounds for relief that arguably may have been present.

Contrary to Arminia's contentions, Shraberg v. Shraberg, Ky., 939 S.W.2d 330 (1997) is inapplicable to this

case. Shraberg addressed the "scope of trial court discretion with respect to holding separation agreements unconscionable pursuant to KRS 403.180(2)." Id. at 331. KRS 403.180 provides that the parties may enter into settlement agreements regarding the disposition of property, maintenance, and custody, support, and visitation as to minor children. The statute authorizes a trial court to review the parties' settlement agreement for conscionability. Arminia's motion was filed eight years after the decree of dissolution, and the only grounds for relief available to her are set forth in CR 60.02. As she has failed to demonstrate the existence or relevance of CR 60.02 criteria with respect to her settlement agreement, we have no basis for assigning error to the trial court.

We therefore affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

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