

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000361-MR
AND
NO. 1999-CA-000403-MR

SANDY GAY, EXECUTRIX FOR THE
ESTATE OF ANNA LEE COUCH

APPELLANT/
CROSS-APPELLEE

v. APPEAL AND CROSS-APPEAL FROM LESLIE CIRCUIT COURT
HONORABLE CLETUS MARICLE, JUDGE
ACTION NO. 96-CI-00235

BELINDA BRONSON, CO-EXECUTRIX
OF THE ESTATE OF DOYLE COUCH, AND
SHARON COUCH, CO-EXECUTRIX
OF THE ESTATE OF DOYLE COUCH

APPELLEES/
CROSS-APPELLANTS

OPINION
REVERSING AND REMANDING
** **

BEFORE: DYCHE, HUDDLESTON, AND KNOPF, JUDGES.

DYCHE, JUDGE: This appeal arises from an order of the Leslie Circuit Court disallowing application of the parties' antenuptial agreement and, otherwise, dividing the marital and non-marital estates. Having reviewed the record and applicable law, we reverse and remand.

Doyle Couch (Doyle) and Anna Lee Couch (Anna Lee) were married on October 19, 1985, in Leslie County, Kentucky. In

contemplation of their pending marriage, the parties executed an antenuptial agreement wherein they specifically reserved their non-marital estates due to the desire that such property be inherited by their respective children from previous marriages.

The union between Doyle and Anna Lee survived nearly eleven (11) years, with Doyle filing a petition for dissolution on August 26, 1996. The court entered its findings of fact and dissolution decree on September 23, 1998, wherein it held, inter alia, the parties' antenuptial agreement was unenforceable in that it was unconscionable at the time of enforcement. Both Doyle and Anna Lee filed exceptions thereto. Doyle passed away on October 26, 1998. Anna Lee passed away on December 15, 1998. The court's final order, in response to the parties' exceptions, was entered on January 14, 1999. This appeal followed.

Anna Lee's estate initiated appeal No. 1999-CA-000361-MR, arguing the trial court erred in the allocation of property, maintenance and attorney fees. Doyle's estate answered and cross-appealed, No. 1999-CA-000403-MR, the court's refusal to enforce the antenuptial agreement. Our review of the record reveals the sole issue addressing the enforceability of the antenuptial agreement is dispositive of both appeals; ergo, we confine our discussion thereto.

Upon reviewing an antenuptial agreement for purposes of enforcement, the court is required to consider whether it satisfies the following standard:

- (1) Was the agreement obtained through fraud, duress or mistake, or through misrepresentation or non-disclosure of material facts?
- (2) Is the agreement

unconscionable? (3) Have the facts and circumstances changed since the agreement was executed so as to make its enforcement unfair and unreasonable?

Gentry v. Gentry, Ky., 798 S.W.2d 928, 936 (1990) (citation omitted).

In the matter sub judice, the court made the following finding regarding the antenuptial agreement:

11. That the parties executed an antenuptial property agreement on the 15th day of October, 1985, prior to the marriage The Court is of the opinion that this agreement is effective pursuant to Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990). Both parties were independently represented by counsel and it does not appear that the agreement was obtained through fraud, duress, mistake, or misrepresentation or non-disclosure of material facts. Further, since [sic] the parties appear to have intended to keep property separate so that children born to each through prior marriages would be able to obtain an inheritance. However, due to the Respondent being affected by ALS or Lou Gehrig's disease around 1990, it is abundantly clear that this agreement should not be enforced due to the fact that the circumstances have changed since the agreement was entered so as to make its enforcement unconscionable. Under the authority of Shraberg v. Shraberg, Ky., 939 S.W.2d 330 (1997) [,] the trial Court may fully decide the case as if there had been no agreement, and that is exactly what the Court chooses to do.

First, we note that court's reliance on Shraberg is misplaced in this instance. Rather, the Shraberg court addressed the propriety of striking a "separation" agreement in its entirety based upon the doctrine of unconscionability. Shraberg, 939 S.W.2d at 333-34. Our supreme court specifically denoted the distinction between "antenuptial agreements" versus "separation agreements" stating that: "the circumstances attending the

formation of antenuptial agreements and separation agreements differ too greatly to permit the principles applicable to the former to substantially influence the latter." Id. at 334 (citing Edwardson v. Edwardson, Ky., 798 S.W.2d 941 (1990)).

In ascertaining the conscionability of an "antenuptial" agreement, the trial court needs to focus upon "the parties' respective financial conditions at the time of enforcement." Gentry, 798 S.W.2d at 936.

Upon a finding of unconscionability, the trial court entertaining such an action may modify the parties' agreement to satisfy the necessary standard, *but should otherwise give effect to the agreement as nearly as possible providing the agreement was not procured by fraud or duress.*

Edwardson v. Edwardson, 798 S.W.2d 941, 945-46 (1990) (emphasis added). As such, the trial court was constrained to follow the directive of Edwardson and merely "modify" the agreement upon a determination that it was unconscionable at the time of enforcement provided it was not procured by fraud or duress.

Here, the trial court made the requisite findings, as required by Gentry, that the parties' antenuptial agreement was valid. Based upon the fact that Anna Lee was stricken with ALS or Lou Gehrig's disease at the time of enforcement, the court struck the agreement in its entirety. Unquestionably, it is conceivable that the health and employability of a spouse may, during the course of the marriage, deteriorate to such an extent that enforcement of an antenuptial's maintenance provision would result in that spouse becoming dependant upon the state for subsistence. In such instances, the court is obligated to

revisit the antenuptial agreement's maintenance provision, while otherwise giving effect to the terms of the agreement.

In the present matter, Anna Lee entered the marriage without any real property and very little personal property. Rather, it was Doyle's financial profile that supported the marital home. At the time of dissolution, Anna Lee's monthly income consisted solely of \$439.00 in Social Security benefits and \$69.00 in Supplemental Social Security benefits.

Section 5 of the agreement in issue provided:

It is understood that *during this marriage* that Doyle Couch will provide a home for Anna Lee Gay and provide her with care and support and the necessities of life. It is understood that either party may elect to provide for the other by will or deed but is under no obligation to do so.

(Emphasis ours).

The effect of this provision precluded Doyle from being obligated to provide Anna Lee with any maintenance upon the dissolution of the couple's marriage. Therefore, converse to the court's course of action in invalidating the entire agreement, the proper remedy was to merely modify same with regard to maintenance. In calculating the proper sum to be awarded, the court should look to KRS 403.200 as the controlling statute.

We are cognizant that the court, indeed, considered the appropriate statute in providing Anna Lee with a maintenance award. However, in so doing, the court considered its previous assignment of marital assets and non-marital reimbursements, i.e., assets upon which Anna Lee could derive a monthly income. Hence, the maintenance calculation was mathematically flawed. It

is necessary, therefore, that the court reconsider the maintenance provision in view of Anna Lee's financial position under the remaining terms of the antenuptial agreement.

Accordingly, the order of the Leslie Circuit Court is reversed and remanded for further consideration in accordance with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-
APPELLEE:

Susan C. Lawson
Harlan, Kentucky

BRIEF FOR APPELLEES/CROSS-
APPELLANTS:

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