

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002868-MR

BRUCE A. GRANT

APPELLANT

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 97-CI-00131

BARBARA ANN CHILTON HONEYCUTT

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, BUCKINGHAM, AND COMBS, JUDGES.

BUCKINGHAM, JUDGE: Bruce A. Grant appeals from an order of the Clinton Circuit Court denying his motion to vacate or set aside a separation agreement entered into by him and Barbara Ann Chilton Honeycutt in their divorce case. We affirm.

Grant and Honeycutt met while serving in the U.S. Army and were married on May 8, 1981. After becoming pregnant with their first child, Honeycutt quit the Army. She apparently never pursued a long-term career or profession and, instead, maintained the home and family while Grant was fulfilling his military duty. During their sixteen-year marriage, Grant and Honeycutt had two children.

Marital problems arose due to Grant's infidelity, and the parties separated on September 3, 1997. Honeycutt hired an attorney to effect a divorce, and a divorce petition was filed in the Clinton Circuit Court on September 16, 1997. On September 30, 1997, a Waiver of Process and Separation Agreement was filed in which Grant waived future service of process and he and Honeycutt settled issues concerning the distribution of assets, allocation of debts, child custody, and payment of child support and maintenance to Honeycutt. On November 19, 1997, an amendment to the agreement was filed altering the disposition of the marital residence. Also on that date, the circuit court entered a decree of dissolution which incorporated the separation agreement.

On January 6, 2000, Grant filed a motion to set aside the separation agreement claiming that it was unconscionable and the result of undue influence and overreaching. The parties were deposed and submitted their depositions as evidence, and the deposition of Honeycutt's attorney was also taken and submitted as proof in the case. Subsequently, the circuit court entered an order finding that Grant had failed to show that the separation agreement was unconscionable or the result of undue influence or overreaching. This appeal followed.

Divorce law in Kentucky promotes the settlement of disputes by agreement and favors stability in such settlement. Peterson v. Peterson, Ky. App., 583 S.W.2d 707, 711 (1979). A party attempting to modify an agreement or have one set aside is required to meet a "definite and substantial burden." Id. An

agreement entered "on the basis of fraud, undue influence, or overreaching" may be set aside as unconscionable. Id. at 712. However, an agreement may not be set aside merely because it was a bad bargain. Id. Nevertheless, a severely one-sided or "lopsided" bargain may be found to be unconscionable. Burke v. Sexton, Ky. App., 814 S.W.2d 290, 292 (1991). "Unconscionable" has been defined to mean "manifestly unfair or inequitable." Shraberg v. Shraberg, Ky., 939 S.W.2d 330, 333 (1997), quoting Wilhoit v. Wilhoit, Ky., 506 S.W.2d 511 (1974).

Grant's first argument is that the circuit court erred in finding that the separation agreement was not manifestly unfair and inequitable. In support of his argument, Grant asserts that the court erroneously determined that Grant had entered into the agreement because he desired to quickly end the marriage so that he could marry again. Grant argues that it was Honeycutt who immediately sought the divorce upon discovering Grant's extramarital affair.

Furthermore, Grant maintains that he misunderstood the concept of maintenance when he entered into the separation agreement. He states that he believed the term "maintenance" to mean funds used for maintaining the parties' residence. He also complains that the agreement is unconscionable because after the divorce Honeycutt remarried and began renting out the former

marital residence.¹ He also asserts that Honeycutt was not entitled to a maintenance award.²

While Grant did not seek separate counsel to represent him in the divorce action, he was not ignorant of the terms contained within the agreement. He read the agreement, and Honeycutt's attorney discussed the agreement's key provisions with him. In addition, Grant holds a bachelor's degree and is retired from a twenty-two-year military career.

The circuit court determined that Grant was a "highly intelligent individual" who decided to enter into the agreement to enable him to quickly end the marriage. Further, the court concluded that Grant failed to establish that the agreement was attained by fraud, undue influence, or overreaching. Under the circumstances noted above, we hold that the trial court was not clearly erroneous in its determinations in this regard.³

Grant's second argument is that the separation agreement was so patently inequitable as to be unconscionable. In other words, he asserts that the terms of the agreement were so one-sided as to be manifestly unfair and inequitable. Grant makes reference to the property he was awarded and the allocation

¹ The agreement provided that the marital residence would be deeded to the parties' minor children subject to a life estate in Honeycutt. Grant agreed to assume the mortgage indebtedness of \$121,618. Honeycutt remarried, moved to Indiana, and rented out the marital residence.

² Honeycutt, who has since remarried, was awarded \$350 per month for life as maintenance.

³ "[T]he trial court is in the best position to evaluate the circumstances surrounding the agreement." Shraberg, 939 S.W.2d at 333. Its conclusion will not be overturned unless clearly erroneous. Peterson, 583 S.W.2d at 712.

of debt as compared to the property Honeycutt was awarded. The circuit court found that Grant did not prove that the agreement was one-sided or so clearly detrimental to Grant's interest as to be manifestly unfair or inequitable. Further, the court determined that Grant merely accepted a "bad bargain" in order to quickly exit the marriage and that he "must face the consequences." Again, we cannot say that the findings of the circuit court were clearly erroneous in this regard.

Finally, Grant argues that insufficient information was submitted to the circuit court for it to approve the separation agreement. As we have noted, the parties submitted their depositions and the deposition of Honeycutt's attorney as proof for the circuit court's consideration. When Grant agreed to submit the case to the circuit court for consideration, he raised no objection that he had not been given the opportunity to present proof to support his position. Further, the court had adequate evidence upon which to base its decision.

The order of the Clinton Circuit Court is affirmed.

COMBS, JUDGE, CONCURS.

BARBER, JUDGE, DISSENTS BY SEPARATE OPINION.

BARBER, JUDGE, DISSENTING BY SEPARATE OPINION. I believe the circumstances of this case fall within the definition of unconscionable. Therefore, I would reverse the trial court's judgment.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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