

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001527-MR

MARSHA KAY CRISP

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 96-CI-01210

CHARLES VERNON CRISP, JR.

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: Marsha Kay Crisp brings this appeal from a June 8, 2001 order of the Boyd Circuit Court. We reverse and remand.

Appellant filed a petition for dissolution of marriage in the Boyd Circuit Court. The matter was set for hearing with the Domestic Relations Commissioner on May 10, 2001. It appears that appellant's counsel and appellee's counsel negotiated prior to the scheduled hearing, and allegedly reached an oral settlement agreement upon the distribution of marital assets and debts. Thereafter, appellee's counsel prepared a written settlement agreement, and faxed it to appellant's counsel. A disagreement arose as to the terms of the written settlement

agreement. Appellant claimed she believed she would receive a greater proportion of marital assets than the agreement allowed; consequently, appellant refused to sign the written settlement agreement.

Appellee filed a motion to enforce the unsigned agreement. Therein, appellee stated that the written agreement reflect the oral agreement "that was reached between the parties and [appellant], for whatever reason, has changed her mind." On June 8, 2001, the Boyd Circuit Court entered an order granting appellee's motion to enforce the agreement. Therein, the court concluded as follows:

A review of the record discloses that there is no allegation of mutual mistake by the parties. The claim of the Petitioner for reformation of the agreement must be coupled with evidence of fraud or misrepresentation in order to reform the agreement on the grounds of unilateral mistake and no such allegation is made.

Appellant filed a motion to alter, amend, or set aside the June 8 order. That motion was denied by the court on June 22, 2001. This appeal follows.

Appellant contends the circuit court committed reversible error by enforcing the unsigned agreement. We are compelled to agree. In Bratcher v. Bratcher, Ky. App., 26 S.W.3d 797 (2000), the Court recognized that Kentucky Revised Statutes (KRS) 403.180 requires a separation agreement to be in writing and signed by the parties. Indeed, KRS 403.180(1) specifically states that "the parties may enter into a **written separation agreement**" (Emphasis added). To be valid and enforceable, we think KRS 403.180 clearly requires a separation

or settlement agreement to be in writing. Hence, we view an oral settlement agreement as unenforceable under KRS 403.180.

At best, the evidence indicates that the parties reached an oral agreement as to the distribution of their marital assets and debts. The evidence is undisputed that the parties had not entered into a written agreement concerning the distribution of their marital assets and debts. Indeed, appellant refused to sign the written settlement agreement tendered by appellee. As such, we are of the opinion that appellant cannot be bound by an alleged oral agreement concerning the distribution of marital assets and debts. Thus, we believe that the circuit court committed reversible error by granting appellant's motion to enforce the settlement agreement.

For the foregoing reasons, the order of the Boyd Circuit Court is reversed and the cause remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard A. Hughes
Ashland, Kentucky

BRIEF FOR APPELLEE:

Bruce W. MacDonald
Greenup, Kentucky