

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002060-MR

RUTH BENEDICT (NOW YATES)

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
CIVIL ACTION NO. 99-CI-00354

DELMAR LEE BENEDICT, JR.

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: GUIDUGLI, HUDDLESTON and KNOPF, Judges.

HUDDLESTON, Judge: Ruth Yates appeals from a Boyle Circuit Court order overruling her objections<sup>1</sup> to the findings of the court's domestic relations commissioner (DRC) concerning the division of marital property in an action seeking dissolution of her marriage to Delmar Benedict, upholding its previous order concluding that Benedict is "entitled to one-half of the increase in the fair

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<sup>1</sup> In the instant case and commonly throughout this jurisdiction, the term "exception" or some variation thereof is used to describe the procedure by which a party obtains trial court review of the report of a domestic relations commissioner (DRC) pursuant to Ky. R. Civ. Proc. (CR) 53.06. In actuality, CR 53.06 does not contain the term "exception" but rather speaks of "objections." For the sake of consistency with the rule, we will use the term "objection" throughout this opinion.

market value of the real properties that was obtained by the joint efforts of the parties."

Yates and Benedict were married on February 14, 1997. Two days prior to their marriage, the parties entered into an antenuptial agreement.<sup>2</sup> In the agreement, Yates and Benedict identified "certain items of valuable property owned on the date of their marriage, which property shall be treated as the separate property of the owner . . . ." Specifically, Yates acknowledged ownership of ten parcels of real estate, nine of which were located in Boyle County, IRAs, mutual funds, trust accounts, Kentucky Retirement accounts and personal belongings. Benedict listed personal belongings and "working equipment" as his separate property.

Pursuant to the agreement, "[p]roperty the title to which is in the name of one of the parties shall be that party's separate property." Of particular relevance, the parties included a provision that "[a]ny appreciation of, improvements to, or income earned by separate property shall be separate property and belong to the owner of the property which produced it." Further, the parties expressed their intentions regarding the treatment of said separate property in the event of a divorce: "[E]ach party agrees that all separate property shall be deemed nonmarital property as defined by [Kentucky Revised Statutes] KRS Chapter 403, and neither party shall assert any claim to the other's separate property."

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<sup>2</sup> Antenuptial agreements are sometimes referred to as "prenuptial agreements" or "premarital agreements," as in the Uniform Premarital Agreement Act. See Black's Law Dictionary, 92 and 1181 (6th ed. 1990).

On August 4, 1999, Yates filed a petition for dissolution of marriage in Boyle Circuit Court and Benedict entered his appearance in the action. Yates and Benedict reconciled for a brief period, separating again on May 20, 2000. Yates then sought to amend her original petition and the matter came before the DRC for a hearing on July 6, 2000. In his report, the DRC concluded that Yates should have exclusive occupancy of the marital residence beginning on July 16, 2000, declined her request for attorney fees, granted her leave to amend the petition, assessed costs against Benedict and scheduled a final hearing on the matter for September 26, 2000.

When the hearing date arrived, the case was continued until discovery could be completed "to be reset at the earliest possible date." On October 18, 2000, the DRC conducted the hearing, ultimately finding the antenuptial agreement valid but determining that Benedict was entitled to "reimbursement" for his contribution to the improvements made to the properties in question.<sup>3</sup> Benedict filed an objection to the report, arguing that the DRC "erred in failing to find that all of the real property purchased by the parties after [their] marriage should be considered marital property." On October 27, 2000, the circuit court entered its findings of fact, conclusions of law and decree dissolving the Benedicts' marriage, restoring Ruth's maiden name and reserving the issue of property division for a later hearing.

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<sup>3</sup> Apparently, the parties "would purchase rental property, with [] Benedict providing labor and services" in order to prepare the properties for tenants. The properties were later sold or rented for a profit. These projects were Benedict's full-time employment but he did not receive a salary.

Yates filed objections to the DRC's report and a motion to strike Benedict's objection, arguing that "the agreement is valid and therefore precludes [Benedict's] claim" and "that it is not unconscionable to disallow [Benedict's] alleged entitlement to time and labor." In an order entered on November 14, 2000, the court found the antenuptial agreement to be valid but also said that "it would be unconscionable to deny [Benedict's] claim for work done to the property, reimbursement for time and labor, subject to [Yates's] setoff claims," delaying any calculations until a future hearing. Ultimately, the court upheld the DRC's finding that the antenuptial agreement is "conscionable and valid." With respect to the DRC's finding that Benedict is entitled to reimbursement for time and labor expended on the properties, the court modified the DRC's report, specifying that Benedict is entitled to one-half of the increased value of the real property obtained by the joint efforts of the parties, leaving the issue of whether Yates is entitled to any set-off to the discretion of the DRC.

On January 16, 2001, the DRC conducted a hearing to resolve the remaining issues in the action which resulted in both parties being instructed to list the personal property in their possession and "list real estate with change in value of property during marriage and what work [Benedict] did if any;" three weeks was allotted for discovery. In response, Benedict submitted a spreadsheet listing a total of seventeen properties (including the ten owned by Yates at the time of the marriage), along with the purchase date, purchase price, fair market value and marital change

in value of each property. Also included was an itemization of the work he allegedly performed on each property and the amount of time spent completing each job.

Following the April 2001 hearing, Yates submitted a detailed memorandum disputing Benedict's contention that the increase in the value of the properties resulted from the parties' joint efforts, citing five reasons in support of her argument. According to Yates, Benedict "mistakes improvements for repairs and maintenance" in his exhibit and his calculations are therefore erroneous. Benedict also fails to "satisfy valuing improvements for joint effort analysis." Further, his exhibit is "erroneous because of mathematical error" related to the FMV of several of the properties. Yates questioned Benedict's credibility "as to the veracity of his claims of performed work on the properties." Finally, Yates argued that Benedict had "produced no evidence, supported by the record, or to be presented at the hearing, to support his claims." In an addendum to the memorandum, Yates sought attorney fees, court costs and related expenses incurred in enforcing the agreement pursuant to its terms as it had been deemed valid.

On June 26, 2001, the DRC held a final hearing to ascertain the value of "[Benedict's] contribution to [Yates's] real estate." Having reviewed all of the available evidence, i.e., the information contained in the pre-trial memoranda and exhibits, the depositions of both parties and the testimony of witnesses, the DRC arrived at a value for the improvements made to each property which is reflected in an addendum to his report. In the DRC's

estimation, the parties made a total of \$113,400.00 in improvements to the properties, one-half of which was awarded to Benedict, with \$2,500.00 in attorney fees and costs being awarded to Yates.

Yates then renewed her motion arguing that the parties' antenuptial agreement precludes Benedict's claims and objected to the DRC's findings, echoing her original assertions. In an order entered on July 13, 2001, the court adopted the findings of the DRC in their entirety but also ordered Benedict to reimburse Yates for the payment of liens on properties which totaled \$12,500.00. In short, the court ordered Yates to pay Benedict the sum of \$41,700.00 (\$56,700.00 in improvements minus \$12,500.00 in lien payments plus \$2,500.00 in attorney fees).

On appeal, Yates argues that the "trial court improperly found the real property owned by [her] prior to marriage and excluded by the antenuptial agreement to be marital property divisible by the court" and further "erred in finding that any appreciation in the properties owned by [her] prior to marriage were marital." In the alternative, she contends that "there is no evidence upon which the trial court could base its opinion as to appreciation" and, finally, that the trial court erred in confirming the DRC's findings with "regard to marital equity."

On the present facts, our standard of review is well established. "Since this case was tried before the court without a jury, its factual findings 'shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the

trial court to judge the credibility of the witnesses.'"<sup>4</sup> If a factual finding is supported by substantial evidence, it is not clearly erroneous.<sup>5</sup> "Substantial evidence is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people. 'It is within the province of the fact-finder to determine the credibility of witnesses and the weight to be given the evidence.'"<sup>6</sup>

In Eiland v. Ferrell,<sup>7</sup> the Supreme Court described the respective roles of the circuit court and the DRC as follows:

A great many circuit courts in Kentucky make use of domestic relations commissioners. The rules relating to such commissioners are found in CR 53.03-53.06, inclusive. Of significance here is CR 53.06 which relates to the report of the commissioner. Subsection (2) of CR 53.06 provides that within ten days after notice of the filing of the report, any party may serve written objections and have a hearing thereon before the circuit court. With respect to the report, the court may adopt, modify or reject it, in whole or in part, and may receive further evidence or may recommit it with instructions. In sum, the trial court has the broadest

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<sup>4</sup> Cole v. Gilvin, Ky. App., 59 S.W.3d 468, 472 (2001).

<sup>5</sup> Id. at 472-473.

<sup>6</sup> Id. at 473.

<sup>7</sup> Ky., 937 S.W.2d 713, 716 (1997).

possible discretion with respect to the use it makes of reports of [DRCs].<sup>8</sup>

A trial court is entitled to reevaluate the evidence and reach a different conclusion than the DRC. "While actions before the court without intervention of a jury are governed by CR 52, et. seq., it seems apparent that on matters referred to a commissioner pursuant to CR 53.03, the specific provisions of the rules relating to commissioners prevail."<sup>9</sup> Our function is limited to ascertaining whether there is substantial evidence to support the circuit court's factual findings and determining whether the circuit court abused its discretion in finding that the antenuptial agreement was conscionable or modifying it as was done in this case.

In Edwardson v. Edwardson,<sup>10</sup> the Supreme Court conclusively resolved any question as to the validity of antenuptial agreements in general, observing that the statutory scheme encourages parties involved in domestic litigation to enter into separation agreements. Permitting parties to enter into antenuptial agreements is consistent with the reasoning behind that policy. "Indeed, KRS 403.190(2)(d) may be read to expressly authorize antenuptial agreements in contemplation of divorce."<sup>11</sup>

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Ky., 798 S.W.2d 941, 945 (1990).

<sup>11</sup> Id. Historically, Kentucky courts recognized the validity of prenuptial agreements only to the extent that they were intended to take effect upon death. Any provisions of an  
(continued...)



However, the enforcement of such agreements is subject to three limitations which should be employed by a court in determining whether to enforce a specific antenuptial agreement: (1) was the agreement obtained through fraud, duress or mistake, or through misrepresentation or non-disclosure of material facts; (2) is the agreement unconscionable; and, (3) have the facts and circumstances changed since the agreement was executed so as to render its enforcement unfair, i.e., is the agreement unconscionable at the time enforcement is sought?<sup>12</sup>

"Unconscionable" has the same meaning for both separation and antenuptial agreements and is defined as "manifestly unfair or inequitable."<sup>13</sup> Such a determination must be made on a case-by-case basis.<sup>14</sup> However, the trial court is vested with broad discretion to modify or invalidate antenuptial agreements.<sup>15</sup> The opponent of an agreement bears the burden of proving it is invalid or should be modified.<sup>16</sup> "Upon a finding of unconscionability, the trial court entertaining such an action may modify the parties' agreement to

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<sup>11</sup> (...continued)  
antenuptial agreement that contemplated divorce or separation were against public policy and therefore void. Apparently, there was some dispute regarding this issue below. We take this opportunity to reiterate that Edwardson and its companion case, Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990), removed any doubt as to the enforceability of antenuptial agreements.

<sup>12</sup> Blue v. Blue, Ky. App., 60 S.W.3d 585, 588 (2001) (citation omitted).

<sup>13</sup> Shraberg v. Shraberg, Ky., 939 S.W.2d 330, 333 (1997); id. at 589.

<sup>14</sup> Id.

<sup>15</sup> Shraberg, supra, n. 12, at 333.

<sup>16</sup> Blue, supra, n. 11, at 589.

satisfy the necessary standard, but should otherwise give effect to the agreement as nearly as possible provided the agreement was not procured by fraud or duress."<sup>17</sup>

Here, there is no allegation that the agreement was procured through fraud, duress, mistake, misrepresentation or non-disclosure. Accordingly, the question becomes whether the agreement is unconscionable, either from its inception or at the time enforcement was sought. Having heard the arguments of both parties and considered the evidence of record, the court chose to adopt (although not explicitly) the DRC's determination that the agreement is conscionable, a choice which was fully within its broad discretion.

Since 1972, Kentucky's version of the Uniform Marriage and Divorce Act, KRS Chapter 403, has provided as a general rule that property acquired by a husband and wife during the course of their marriage is subject to equitable division between them in the event of divorce.<sup>18</sup> However, "[t]hroughout the law parties are permitted to enter into agreements which modify the result which would obtain if the matter was finally litigated"<sup>19</sup> and, subject to the aforementioned limitations, the right to enter into antenuptial agreements has been specifically upheld. By virtue of the antenuptial agreement executed here, Benedict and Yates agreed to forego this equitable division. Although the claims Benedict relinquished by the terms of the agreement are substantial, "a bad

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<sup>17</sup> Edwardson, supra, n. 9, at 945-946.

<sup>18</sup> Blue, supra, n. 11, at 588.

<sup>19</sup> Edwardson, supra, n. 9, at 945.

bargain and unconscionability [are] not synonymous.” The relevant cases reveal that provisions of the type at issue are not uncommon. In cases of this nature, “the trial court is in the best position to evaluate the circumstances surrounding the agreement.”<sup>20</sup> Given the guidelines and the level of deference afforded to the circuit court in this regard, we decline to alter its resolution of this issue.

Equally within the court’s authority was the decision to modify the agreement with respect to Benedict’s entitlement to one-half of the value of the improvements to the properties upon implicitly finding that a failure to do so would be inequitable under the circumstances, *i.e.*, that Benedict met his burden of establishing that modification of the agreement was warranted because it was unconscionable at the time enforcement was sought. Because the court limited itself to the matter deemed “manifestly unfair,” leaving the remainder of the agreement intact so as to give effect to the parties’ intentions, its action was both reasonable and proper.

When the value of property increases after marriage due to general economic conditions, the increase does not constitute marital property.<sup>21</sup> But, the opposite is true when the increase results from the joint efforts of the parties.<sup>22</sup> Therefore, when the property acquired during the marriage includes an increase in

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<sup>20</sup> Id.

<sup>21</sup> Goderwis v. Goderwis, Ky., 780 S.W.2d 39, 40 (1989); Travis v. Travis, Ky., 59 S.W.3d 904 (2001).

<sup>22</sup> Id.

the value of an asset containing both marital and nonmarital components, trial courts must determine from the evidence "why the increase in value occurred." <sup>23</sup> However, KRS 304.190(3) creates a presumption that an increase in value is marital property. Accordingly, a party asserting that he or she is entitled to receive appreciation upon a nonmarital contribution as nonmarital property must rebut that presumption; failure to do so results in the increase being characterized as marital property.<sup>24</sup>

In the instant case, the court offered the following analysis in support of its modification of the agreement:

On the issue of [Benedict's] burden of proof regarding his contribution to the non-marital properties' marital-period improvement and increase in value, the Court notes that in Kentucky tracing requirements are satisfied by a party's testimony and that documentation of a claim is not required. According to the record, sworn testimony regarding the value of the properties was obtained from [Benedict] and [Yates]. At the January 16, 2001, hearing before the [DRC], [Yates] herself presented extensive testimonial evidence regarding the increase in value of every relevant piece of real property, or the lack thereof, as well as the extent of [Benedict's] contributions to the increase in value of the non-marital property. Furthermore, [Benedict] provided on-stand testimony from two witnesses regarding the extent of

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<sup>23</sup> Id.

<sup>24</sup> Travis, supra, n. 21, at 910-911.

[Benedict's] labor on and improvements to the properties in question.

As discussed above, [Yates] offered no substantive proof other than her own testimony, documentation, and canceled drafts to counter [Benedict's] statements as to the value of the improvements to the real property at issue. The record clearly shows that when the [DRC] rendered his findings, he found that valuation increases attributable to joint efforts at improvement could be reasonably adduced and apportioned following a comparison of [Benedict's] and [Yates's] sworn statements. [Yates] is entirely correct that under Kentucky law a mere increase in value of a non-marital asset does not constitute marital property. To reiterate: if [Yates] believed that [Benedict's] calculated valuation of the properties was solely based upon economic factors or factors unrelated to actions undertaken by [Benedict], [Yates] had ample notice and opportunity to present substantive evidence.

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The record of the above-styled case clearly shows that depositions, in-court testimony and information provided in the pre-trial memoranda submitted by the parties contains detailed information concerning the date of purchase of each piece of realty, the value of [his] labor, the contributions of [Yates], and marital equity, each of which contributes to a description of the

proportion of the real property appreciation attributable to the joint efforts of the parties. For example, the 1996 purchase price of the property at 510 North Third Street in Danville, Kentucky was \$42,000.[00]. The estimated 2001 fair market value of the property is \$64,000.[00]. As is apparent from the record of the June hearing, the [DRC] took these figures into account along with evidence submitted by both parties to arrive at a joint-contribution-to-increase in-value sum of \$10,000.[00].

This Court remains satisfied that the [DRC's] recommendations were reasonable and that the Order issued on the basis of those recommendations was within the purview of the discretion of this Court.<sup>25</sup>

In summary, upon considering the arguments of both parties, thoroughly reviewing the DRC's report and the basis for its findings and applying the governing legal principles, the court found that Yates failed to satisfy her burden of establishing that the increase in the value of the properties was attributable to general economic conditions rather than the joint efforts of the parties. As substantial evidence exists to support the court's determination as to why the properties increased in value as well as the specific amounts of appreciation, its findings cannot be disturbed. Having found that Yates did not rebut the presumption that the increases in value are nonmarital property, the court

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<sup>25</sup> Citations omitted.

reached the necessary conclusion that the increases must be treated as marital property and divided in an equitable manner. As revealed by the evidence of record, the court employed an entirely proper and typical method of division – 50/50, fairly compensating both parties for their respective contributions. Contrary to Yates's assertion, this measure did not constitute an abuse of discretion – quite the opposite.

As the circuit court has neither committed clear error nor abused its discretion, its order is affirmed.

GUIDUGLI, Judge, CONCURS.

KNOFF, Judge, CONCURS WITH SEPARATE OPINION.

KNOFF, Judge, CONCURRING: I concur with the majority opinion, but write separately to emphasize an additional point. As the majority correctly holds, the controlling issue in this case is whether the prenuptial agreement was unconscionable at the time enforcement was sought. The appropriate test of the substantive fairness of a prenuptial agreement requires a finding that the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work an injustice. The emphasis of this inquiry relates to the reasonable expectations of the parties as contemplated by the agreement.<sup>26</sup>

If non-marital property appreciates through the joint efforts of the parties, the increase in value is deemed to be

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<sup>26</sup> Blue v. Blue, Ky. App. 60 S.W.3d 585, 590 (2001).

marital.<sup>27</sup> The "joint efforts of the parties" may be broadly construed to include the contribution of one spouse as a primary operator of the business and the other spouse as primarily a homemaker.<sup>28</sup> Furthermore, income produced from non-marital property is also marital.<sup>29</sup> However, when Benedict signed the prenuptial agreement, he specifically waived any right to appreciation of, improvements to, or income earned by Yates's separate property. In other words, he disclaimed any interest to which he would otherwise have been entitled.

Nevertheless, the trial court specifically found that Benedict personally contributed labor and services for improvements to Yates's separate property. The trial court's factual finding regarding the value of his labor and services was supported by substantial evidence. Benedict's contributions went substantially beyond what the parties contemplated at the time the agreement was signed. Accordingly, the trial court's finding supports the conclusion that enforcement of the prenuptial agreement with respect to these contributions would unjustly enrich Yates and would work an injustice to Benedict. Consequently, the trial court properly upheld the agreement while also allowing Benedict reimbursement for his direct contribution to improvements made to the properties in question.

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<sup>27</sup> Goderwis v. Goderwis, Ky., 780 S.W.2d 39, 40 (1989).

<sup>28</sup> Id.

<sup>29</sup> Sousley v. Sousley, Ky., 614 S.W.2d 942, 944 (1981).



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