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NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

# Court of Appeals

NO. 2002-CA-001799-MR

DONNA LEE MABERRY REDMON — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE REED RHORER, JUDGE
ACTION NO. 99-CI-00099

JOSEPH STEWART REDMON — APPELLEE

## OPINION

## REVERSING AND REMANDING

** ** ** ** **

BEFORE: BUCKINGHAM, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Donna Lee Maberry Redmon ("Mrs. Redmon") appeals from a final order of the Franklin Circuit Court on the motion of Joseph Stewart Redmon ("Mr. Redmon") to modify his child support obligation. Mrs. Redmon maintains that the circuit court erred in vacating an arbitrator's award finding that no modification was warranted. For the reasons stated herein, we reverse and remand.

The Redmons were married on September 28, 1985. The married produced two children, a daughter, Jordan Lee Redmon, and a son, Joseph Stewart Redmon, Jr. On January 29, 1999, Mr. Redmon filed a petition for dissolution of marriage in Franklin Circuit Court.

On July 15, 1999, the Redmons entered into a settlement agreement addressing, among other things, custody and child support. The agreement provided in relevant part that Mrs. Redmon would serve as primary custodian to the children, with Mr. Redmon having liberal visitation. It further provided that Mr. Redmon would pay $5,000 per month in child support to Mrs. Redmon until Jordan reached the age of 18 or graduated from high school, at which time the obligation would reduce to $3,000 per month until Joseph Jr. reached the age of 18 or graduated from high school. The parties agreed that any request for modification of the child support obligation would be submitted to binding arbitration with no right of appeal.

On September 28, 2001, Mr. Redmon filed a motion to reduce his child support obligation. As a basis for the motion, he alleged a material change in circumstances, i.e., a reduction in income. On January 21, 2002, a hearing on the motion was heard before an arbitrator whom the parties had designated in the July 15, 1999, agreement.

Mr. Redmon tendered proof at the hearing that his 1999 adjusted gross income was $523,886. His 2000 income was shown to be $352,288, and his CPA calculated that his 2001 income would be $275,000. The CPA stated that much of the diminution in income resulted from the termination of payments he had been receiving from the sale of stock.

Upon considering the proof, the arbitrator rendered an award finding that since Mr. Redmon had agreed to the $5,000 monthly child support payment, and was aware at the time of the settlement that his income would decrease, he was not entitled to a reduction in his child support obligation.

Mr. Redmon, through counsel, then filed a motion with the Franklin Circuit Court to vacate, modify or correct the arbitrator's award. He argued therein that the award was so grossly excessive as to be considered a result of fraud. Proof on the motion was heard. On May 31, 2002, the circuit court rendered an order finding that the award was excessive and required diminution. The court found that the agreement did not limit the change in circumstances language to changes not contemplated at the time of the agreement. It further found that the arbitrator's award did not account for the possibility that Mr. Redmon agreed to the $5,000 amount because he knew he could seek a reduction as his income decreased.

The court was persuaded by Mr. Redmon's CPA, who used the Redmon's income and the child support guidelines to extrapolate that Mr. Redmon should pay $2,402.06 per month in child support. Its order reflected that amount, and this appeal followed.

Mrs. Redmon now argues that the circuit court committed reversible error in tampering with the arbitrator's award. She notes that the settlement agreement provides that any issue of child support modification would be submitted to arbitration and would not be subject to appeal. She claims that the court improperly concluded that the award was a result of fraud, and that it is bound by statutory law and case law to accept the award even if it disagrees with it. She also argues that the trial court erred in substituting its award for that of the arbitrator. She seeks an order reversing the circuit court and remanding the matter with instructions to confirm the arbitrator's award. Mr. Redmon counters that the circuit court had the procedural right to review the arbitrator's decision, and that it properly reviewed the award and fixed his support obligation in accordance with Kentucky law.

KRS 417.050 provides that a written agreement to submit a controversy to arbitration is valid, enforceable and irrevocable, except for grounds existing at law for the revocation of any contract. An arbitration decision will not be

held invalid merely because it is unjust, inadequate, excessive or contrary to the law. Carrs Fork Corp. v. Kodak Mining Co., Ky., 809 S.W.2d 699, 702 (1991). It shall not be set aside even if it is wrongly decided. Id.

In order to reverse an arbitrator's decision, the award must be procured by corruption, fraud or other undue means, KRS 417.160, and the corruption or fraud must be so strong and manifest that "it must be impossible to state it to a man of common sense without producing an exclamation at the inequity of it." Carr, supra, quoting Second Society of Universalists v. Royal Insurance Co., 221 Mass. 518, 109 N.E. 384 (1915).

While we are reluctant to tamper the trial court's rulings as they are presumptively correct, City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964), we cannot conclude that the arbitrator's award in the matter at bar was so outrageous as to properly be characterized as fraud. We reach this conclusion for two reasons. First is the general proposition regarding the validity of arbitration awards espoused in Carrs, to wit, that such an award shall not be held invalid even if it is unjust, excessive, or wrongly decided. Even if the award at issue is excessive or unjust, it nevertheless must be affirmed by the circuit court.

Second, the totality of the circumstances compel a conclusion that the award was something short of fraudulent. The arbitrator did not create the $5,000 sum; rather, it was an amount fixed by the Redmons in the settlement agreement. Mr. Redmon agreed to pay this amount while represented by counsel and with the knowledge that his income would be reduced in subsequent years. It is also an amount which Mr. Redmon said he could afford, and represented about 17% of his 2000 adjusted gross income. And lastly, the obligation will reduce to $3000 per month no later than next year when Jordan reaches the age of 18. Given all of the facts surrounding the arbitrator's decision, we cannot conclude that the award would, in the language of Carrs, cause a common man to produce an exclamation at its inequity.

We hold as moot Mrs. Redmon's second argument addressing the trial court's alleged error in substituting its award for that of the arbitrator.

For the foregoing reasons, we reverse the May 31, 2002, order of the Franklin Circuit Court and remand the matter for an order denying Mr. Redmon's motion to vacate, modify or correct the arbitrator's award.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mark A. Bubenzer
Frankfort, KY

BRIEF FOR APPELLEE:

Paul C. Gaines, III
Frankfort, KY