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Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002034-MR

PHILLIP BYRON BUSH

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE PHILIP R. PATTON, JUDGE
ACTION NO. 03-CI-00233

DEBBIE COMBEST

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, JOHNSON, AND KNOPF, JUDGES.

JOHNSON, JUDGE: Phillip Byron Bush has appealed from an order entered by the Barren Circuit Court on August 20, 2003, which dismissed his complaint against Debbie Combest on jurisdictional grounds. Having concluded that the family court division of Barren Circuit Court has exclusive jurisdiction over the issues raised in Bush's complaint, we affirm.

Bush and Combest were married on October 26, 1997, in Gatlinburg, Tennessee. Sometime thereafter, the couple took up residence in Barren County. On January 22, 2002, Combest filed a petition for dissolution of marriage in the Barren Circuit

Court. On May 9, 2002, Bush and Combest entered into a written separation agreement, which provided, in relevant part, as follows:

WHEREAS, the parties are desirous of effecting settlement of their property rights, irrespective of whether or not a decree dissolving their marriage be entered, and of determining, by agreement, questions of division of marital property, and all other matters in issue, and said parties having reached an understanding and agreement which they desire to reduce to writing,

NOW, THEREFORE, for and in consideration of the premises and other good and valuable considerations as are hereinafter stated, including the mutual covenants herein, it is agreed by and between the parties hereto, as follows:

1. Husband's waiver. Husband does hereby waive, release, and relinquish unto Wife, her heirs and assigns forever, all of his right, title, and interest in and to all property now owned or hereafter acquired by Wife[.]

. . .

4. Wife had title to 101 acres of farmland which was in her name prior to this marriage. This property is secured by indebtedness owed to Area Bank, a portion of which was incurred during the establishment of Country Auto Sales. The 101 acres will remain the property of Wife and she will retain full ownership interest in the business, Country Auto Sales, and its inventory. Husband makes no claim to marital or non-marital interest in the 101 acres of farmland; the business, Country Auto Sales; or the business' inventory.

. . .

14. The parties agree that certain other marital property and debts that were accumulated during this marriage have been divided in kind and that each party has received his or her separate share of the marital property[.]

On May 15, 2002, the Barren Circuit Court entered a decree of dissolution, which incorporated the separation agreement.

On or about November 25, 2002, Combest initiated contempt proceedings against Bush in the Barren Circuit Court for allegedly failing to comply with the terms of the separation agreement. On January 6, 2003, the family court division of Barren Circuit Court was created pursuant to Section 112(6) of the Kentucky Constitution. The contempt proceedings were subsequently transferred to the family court division of Barren Circuit Court.¹

On April 8, 2003, Bush filed a complaint in Barren Circuit Court, in which he alleged, inter alia, that he entered into an oral agreement with Combest, prior to the execution of the written separation agreement, regarding the disposition of the farmland and the business known as Country Auto Sales. More specifically, Bush claimed Combest orally agreed to surrender possession of Country Auto Sales on or before August 31, 2002, and that she agreed to hold title to the farmland in trust for

¹ The record is silent as to the status or disposition of the contempt proceedings.

the benefit of Bush's son.² Bush insisted that this oral agreement "was independent of, collateral to, and not inconsistent with, the [separation] agreement[.]" Bush claimed the terms of the separation agreement were "devised by the parties in order to protect the assets from creditors." In addition, Bush alleged that in Mach 2002 he entrusted Combest with \$10,000.00 "to preserve and protect for him while he was incapacitated by an illness[,]" which she failed to return.

On May 5, 2003, Combest filed an answer and counterclaim, in which she alleged, inter alia, that the Barren Circuit Court lacked jurisdiction over the subject matter of the issues raised in Bush's complaint.³ In sum, Combest maintained that Bush's complaint was an attempt to collaterally attack the validity of the written separation agreement entered into between the parties on May 9, 2002. In support of this contention, Combest attached a copy of the separation agreement and the decree of dissolution incorporating the agreement. On August 20, 2003, the Barren Circuit Court entered an order dismissing Bush's complaint. The order reads, in relevant part, as follows:

² Bush maintained that an "express[] specific agreement [existed] between the parties which imposes a constructive trust on the title to the [farmland] for [his] son, Daron Bush."

³ Combest also denied the existence of any oral agreement concerning the farmland and Country Auto Sales and she claimed the \$10,000.00 Bush allegedly entrusted her with was a gift.

The Court after hearing argument of counsel and having reviewed the pleadings and memorandum filed herein finds that the subject matter of the above styled action is an effort to collaterally attack the decision from the dissolution action between the parties. The Court finds that the Barren Circuit Family Court Division has exclusive jurisdiction of these matters.

This appeal followed.

Bush's sole argument on appeal is that the Barren Circuit Court erred by dismissing his complaint. In sum, Bush contends the Barren Circuit Court has subject-matter jurisdiction over the issues raised in his complaint pursuant to Section 109 and Section 112(5) of the Kentucky Constitution. We disagree.

Section 112 of the Kentucky Constitution provides, in relevant part, as follows:

(1) Circuit Court shall be held in each county.

. . .

(5) The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court. It shall have such appellate jurisdiction as may be provided by law.

(6) The Supreme Court may designate one or more divisions of Circuit Court within a judicial circuit as a family court division. A Circuit Court division so designated shall retain the general jurisdiction of the Circuit Court and shall have additional jurisdiction as may be provided by the General Assembly [emphasis added].

A family court's jurisdiction is defined by KRS 23A.100, which provides, in relevant part, as follows:

(1) As a division of Circuit Court with general jurisdiction pursuant to Section 112(6) of the Constitution of Kentucky, a family court division of Circuit Court shall retain jurisdiction in the following cases:

- (a) Dissolution of marriage;
- (b) Child custody;
- (c) Visitation;
- (d) Maintenance and support;
- (e) Equitable distribution of property in dissolution cases;
- (f) Adoption; and
- (g) Termination of parental rights.

. . .

(3) Family court divisions of Circuit Court shall be the primary forum for cases in this section, except that nothing in this section shall be construed to limit the concurrent jurisdiction of District Court [emphasis added].⁴

Thus, in judicial circuits where the Supreme Court has designated a family court division of circuit court, jurisdiction over the matters set forth in KRS 23A.100 is exclusively vested in the family court. To hold otherwise would

⁴ KRS 23A.100 was repealed, reenacted, and amended in 2003. See 2003 Ky. Acts, Ch. 66, § 1, eff. June 24, 2003. Prior to June 24, 2003, family court jurisdiction was defined by KRS 23A.110, which was also repealed, reenacted, and amended in 2003. See 2003 Ky. Acts, Ch. 66, § 2, eff. June 24, 2003.

defeat the very purpose for which family courts were created, i.e., to consolidate the litigation on all cases and controversies related to the family into one court. Moreover, we are persuaded that Bush's complaint is nothing more than a thinly-veiled attempt to collaterally attack the decree of dissolution entered by the Barren Circuit Court on May 15, 2002. While Bush insists that he is simply attempting to enforce an oral agreement between himself and Combest, he fails to acknowledge that the resolution of the issues raised in his complaint would require an interpretation of the written separation agreement, which was incorporated into the decree of dissolution. As previously discussed, the family court division of Barren Circuit has exclusive jurisdiction over cases involving, inter alia, dissolution of marriage and the equitable distribution of property in dissolution cases. In sum, we are convinced that the family court division of Barren Circuit Court is the appropriate forum for Bush to litigate the issues raised in his complaint. Consequently, the Barren Circuit Court did not err when it dismissed Bush's complaint.

Based on the foregoing reasons, the order of the Barren Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION.

KNOPF, JUDGE, CONCURRING IN RESULT ONLY: While I fully agree with the result reached by the trial court and the majority, I do not believe that it is necessary to reach this result by limiting the subject matter jurisdiction of the circuit court. Under the terms of the settlement agreement, Bush surrendered possession of the auto sales business to Combest. In his subsequent complaint, Bush alleged that the parties later entered into an oral agreement which required Combest to return ownership of the business to him. Bush also alleged that during their period of separation prior to entry of the decree, he entrusted \$10,000.00 to Combest while he was incapacitated by a serious illness. Despite Bush's assertions to the contrary, these issues were clearly subsumed by the settlement agreement and by the dissolution decree. And as the majority correctly notes, any resolution of these alleged oral agreements would require an interpretation and modification of the written settlement agreement. Consequently, they could only be addressed through a motion to re-open the dissolution judgment and modify the settlement agreement.⁵ Thus, Bush's

⁵ CR 60.02 and KRS 403.250(1). See also Brown v. Brown, Ky., 796 S.W.2d 5, 7-8 (1990).

attempt to circumvent this process by filing a new complaint in circuit court was barred by the doctrine of *res judicata*.⁶

The trial court and the majority, however, conclude that the circuit court lacked subject matter jurisdiction over the allegations in Bush's complaint. I disagree. As the majority correctly notes, the 2002 amendment to Section 112 of the Kentucky Constitution authorized the creation of a family court division within the circuit court. As a division of circuit court, family court has general jurisdiction, plus jurisdiction over juvenile and other family-related matters which are otherwise assigned to the district court.

KRS 23A.100(3) specifically provides that "Family court divisions of Circuit Court shall be the *primary forum*" for cases set out in subsection (1) of the statute. The trial court and the majority read this to mean that the family court has exclusive jurisdiction over these matters. But the term "primary forum", when considered in the context of Ky. Const. § 112 and the rest of KRS 23A.100, suggests that the circuit court and the district court retain concurrent jurisdiction over matters which would be assigned to them in the absence of a family court. The family court is designated as the primary, not the exclusive forum, for such cases. As a practical matter,

⁶ See Commonwealth ex rel. Hansard v. Schackleford, Ky. App., 908 S.W.2d 671 (1995).

this is a subtle distinction that will generally not be a factor. Nevertheless, I believe that the majority goes further than the legislature intended by holding that the regular divisions of circuit court have no jurisdiction over these matters whatsoever.

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