RENDERED: April 15, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002535-MR

NOAH RANDAL AMBURGEY APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT, DIVISION III
HONORABLE JULIE M. PAXTON, JUDGE
ACTION NO. 02-CI-00583

VANESSA MAE SLONE AMBURGEY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER AND JOHNSON, JUDGES; AND HUDDLESTON, SENIOR JUDGE.[1]

BARBER, JUDGE: Appellant Noah Amburgey appeals a ruling of the Floyd Circuit Court denying his motion to enforce terms of the parties' decree of dissolution. We affirm the trial court's rulings.

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Noah claims that Appellee Vanessa Mae Slone Amburgey induced him into signing a "Waiver and Agreement" on June 7, 2002. The terms of the document gave Vanessa the very limited equity in the marital residence, the household furnishings, one vehicle, half of Noah's Social Security back pay award, and all her personal belongings. Noah was relieved of the substantial debt remaining on the residence and was granted his personal property and one vehicle. The Waiver and Agreement states at paragraph 10, "the parties agree and acknowledge that they make no claims to any property or items in the other's possession and state that each has in his or her possession those items belonging to them." The Agreement was signed and filed by the parties.

A Petition for Dissolution was filed on June 10, 2002. A Decree of Dissolution was entered on June 21, 2002. The Decree of Dissolution adopted the terms of the Agreement signed by the parties on June 7, 2002 which stated that the parties already had their own property in their possession and that no further issues remained to be resolved.

Noah filed a timely motion seeking to nullify the waiver and agreement, and to amend, alter or vacate the decree of dissolution. The motion was made on the grounds that he was functionally illiterate and did not understand the true nature of the waiver and agreement at the time he signed the document.

Vanessa asserts that Noah is able to read. A hearing was held on the motion. Both parties were represented by counsel during the hearing. At the hearing, counsel for Vanessa informed the court that he had "sat them [Noah and Vanessa] down and explained it [the property settlement agreement] to them. . . ." Counsel stated that at no time had Noah informed him that he couldn't read. The uncontroverted testimony shows that the parties appeared to be reading the document while at the attorney's office. The parties agree that Noah and Vanessa discussed the document while at the attorney's office after they had reviewed it.

Noah contended that Vanessa's attorney had not explained the document to him, and that he did not understand what he was agreeing to at the time he signed the agreement. Noah claims that for this reason, the document should be set aside.

Counsel for Noah also argued that his client had not received the personal property he was entitled to under the terms of the agreement, which consisted of a third automobile and numerous tools. Vanessa testified that at the time the Petition for Dissolution was filed, Noah had already taken the tools from the home. Vanessa stated that no further personal property belonging to Noah was in her possession. With regard to the third automobile which Noah was claiming Vanessa stated

that the car was junk, that she had bought it for $400 and that she had sold it for $1000. The court entered an Order in January 2003 stating:

> The Court finds the agreement of the parties to be fair and equitable and entered into by both with full understanding. This is a final and appealable order.

No appeal was taken by either party and no timely motion to reconsider or set aside the order was filed. It is fairly settled that where a property settlement is not manifestly unjust, the court should affirm it. McMurry v. McMurry, 957 S.W.2d 731, 733 (Ky.App. 1997).

In April 2003 Vanessa filed a motion to compel Noah to pay her half of his Social Security back pay in accordance with the Agreement. Noah requested that the court offset that sum by the profit Vanessa earned selling the third vehicle. He claimed ownership of that automobile. Noah asserted that Vanessa had converted the vehicle, which he claimed was worth approximately $8,000, and had retained the money from the sale. Vanessa stated that the vehicle was purchased for $400, that she paid for it, and that she sold it for $1000. Noah also asserted that Vanessa had failed to return other items of his personal property. No items were listed with specificity and the court did not rule on Noah's assertions. The court denied Noah's request for an offset and ruled that Noah was required to

provide Vanessa with half of his back pay. Noah contends that at that time, he had not yet received the Social Security award and therefore, could not provide Vanessa with her share of the funds. No appeal or motion to reconsider was filed with regard to the court's order.

In August 2003 Vanessa filed a motion to hold Noah in contempt for failing to pay her half of the back pay award. Noah asserted that he had not received the back pay at that time and permitted the court and counsel for Vanessa access to his social security attorney so that the parties could determine when the back pay arrived. During the hearing, Noah asked the court to be heard by a jury on his allegations that Vanessa had not given him half the "stuff" in the house. The court declined to hear that issue as the parties were before the court only on the motion for contempt. It is clear that the court may not address outside issues in a hearing on a specific motion. Gladish v. Gladish, 741 S.W.2d 658, 661 (Ky.App. 1987). The court issued an order permitting Vanessa access to Noah's Social Security attorney so that she could obtain her share of the funds when they became available. Noah does not appeal the right of Vanessa to one half of the funds. He also did not appeal the court's refusal to address the property settlement issues in the hearing.

In October 2003 Noah filed a motion to restore his personal property, asking for return of all property still in Vanessa's possession, and compensation for any property sold by Vanessa. The motion contended that Vanessa had never permitted Noah to get his personal belongings from the home in which the parties formerly resided. A list of tools allegedly still in Vanessa's possession was attached to the motion. Such a list had never previously been filed. During the hearing the court held that the final and appealable order had been issued long before, and that no further motions would be entertained. The court held that, with the exception of the social security issue, the case was over. The ruling stated that "it is ORDERED that this matter is final except for the issue of payment by the Respondent to the Petitioner of one-half of Respondent's Social Security back pay when received."

Noah contends that there is a fifteen year statute of limitations for enforcement of a judgment, decree or written contract. He alleges that Vanessa has failed to give him his personal property that was in the home at the time of the dissolution. He claims that the court has power to enforce the terms of the divorce decree. The record shows that Vanessa repeatedly refuted Noah's assertion that any personal property belonging to him remained in the home after dissolution of the marriage. The record also contains evidence indicating that the

third automobile Noah claims was purchased by Vanessa, and that she sold that automobile after the dissolution.

A settlement of property rights is to be finalized as much as possible at the date of divorce. Light v. Light, 599 S.W.2d 476, 479 (Ky.App. 1980). A settlement agreement should be reopened only in light of the most unusual circumstances. Cawood v. Cawood, 698 S.W.2d 823, 826 (Ky. 1985). Repeated hearings before the trial court contained testimony showing that the property was divided at the time of the dissolution. The property settlement agreement executed and filed by the parties stated that the parties each had in their own possession any personal property at the time the agreement was executed. At the time Noah finally filed his motion requesting certain items of personal property, the divorce had been final for over a year. Based on the earlier evidence that the property had previously been divided, the court declined to allow Noah to reopen the issue. A trial court's ruling in a dissolution matter is reviewed under the clearly erroneous standard of review. Hunter v. Hunter, 127 S.W.3d 656, 660 (Ky.App. 2003). As Noah failed to show that the trial court's ruling was clearly erroneous, we affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Nathan Collins
Lackey, Kentucky

BRIEF FOR APPELLEE:

Ralph H. Stevens
Prestonsburg, Kentucky