

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002054-MR
AND
CROSS-APPEAL NO. 2004-CA-002164-MR

GLENN THOMAS TAYLOR

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM JEFFERSON FAMILY COURT
v. HONORABLE ELEANORE GARBER, JUDGE
ACTION NO. 02-CI-502123

RHONDA LYNN TAYLOR

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING APPEAL NO. 2004-CA-002054-MR
AND
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING CROSS-APPEAL NO. 2004-CA-002164-MR

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BEFORE: TACKETT AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Glenn Thomas Taylor brings this appeal from a June 28, 2004, Findings of Fact, Conclusions of Law and Judgment of the Jefferson Family Court regarding the division of property incident to the parties' decree of dissolution of marriage

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

entered July 15, 2003. Rhonda Lynn Taylor brings a cross-appeal from the same order. We affirm in part, reverse in part, and remand Appeal No. 2004-CA-002054-MR. We affirm in part, vacate in part, and remand Cross-Appeal No. 2004-CA-002164-MR.

Glenn and Rhonda Taylor married on August 21, 1991. One week prior to the marriage, Glenn and Rhonda executed a "Premarital Agreement" (agreement). Pursuant to the agreement, the parties disclosed and valued their respective assets. Relevant to this appeal, Glenn disclosed the business of Air Comfort Heating & Air Conditioning (Air Comfort), which Glenn began in 1982. Rhonda disclosed no assets. Rhonda and Glenn's marriage was subsequently dissolved by decree of dissolution entered July 15, 2003. The decree reserved all property issues for later adjudication.

The family court subsequently entered its Findings of Fact, Conclusions of Law and Judgment. Therein, the family court addressed disposition of the parties' assets, spousal maintenance, and attorney's fees. The court found as follows:

The Court finds, therefore, that when the business was sold for the gross sum of \$532,000, that sum represented a recoupment by the Petitioner of \$135,000 (25% of total value) in nonmarital value and the receipt by the parties of \$397,000 (75% of total value) in marital equity. Of the \$478,200 net proceeds realized, \$119,500 (25%) is the Respondent's nonmarital property and \$358,700 (75%) is the parties [sic] marital property.

The court divided the marital property interest by awarding sixty percent (60%) to Glenn and forty percent (40%) to Rhonda. This appeal follows.

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Glenn contends the family court erroneously determined the increase in the value of Air Comfort was marital property. Glenn asserts the court improperly interpreted the agreement. Specifically, Glenn asserts the agreement provided that Rhonda "waives" all interest in property Glenn owned; thus, Rhonda waived any and all property interest in Air Comfort, including its increased value. The parties' agreement provided, in relevant part, as follows:

For good and valuable consideration, the receipt of which is hereby acknowledged, and for the further consideration of the solemnization of the proposed marriage between the parties hereto, **each party hereto hereby waives, relinquishes, bars and surrenders all of his or her right, title and interest in and to the property now owned by the other or traceable to said property** which property is specifically listed in the exhibit schedules attached hereto and made a part hereof (Exhibit Schedule A is a list of the assets of Intended Wife and Exhibit Schedule B is a list of the assets of Intended Husband) which interest or right shall, or may, be hereinafter vested in said party because of said marriage, as the husband, or wife, or widower, or widow of the other party, and consisting of dower, curtesy, homestead

rights, right to act as administrator or executor in the estate of the other, right of statutory exemptions and all right, title and interest in and to all lands, tenements, hereditaments, and all other property of every nature that the other party now owns. (Emphasis added).

Exhibit B of the agreement described the business of Air Comfort as follows:

The business of Air Comfort Heating & Air Conditioning, including inventory which would be valued at any time approximately \$65,000.00.

Premarital (also referred to as prenuptial) agreements are generally enforceable in Kentucky. Gentry v. Gentry, 798 S.W.2d 928 (Ky. 1990). In Gentry, the Kentucky Supreme Court held that premarital agreements are subject to three limitations including whether the agreement is obtained through fraud or misrepresentation, whether the agreement is unconscionable on its face, or whether the facts and circumstances have changed since the agreement was entered into so as to make its enforcement unfair and unreasonable. Id. The family court made no findings regarding the enforceability of the agreement and since the family court did allocate a nonmarital value for Air Comfort to Glenn, we can only assume that the family court determined the premarital agreement to be valid and enforceable.²

² The record on appeal is meager at best. An arbitrator was assigned by the family court to hear all proof in this proceeding. However, no transcript or record of these proceedings was preserved or included in the record on

It is well-established that interpretation of a contract is a matter of law to be decided by the court. First Com. Bank of Prestonsburg v. West, 55 S.W.3d 829 (Ky.App. 2000). In the case *sub judice*, the operative language of the agreement clearly states that Rhonda waived all interest in the property Glenn owned and all interest traceable to said property. The specific language "waives. . . all . . . interest in and to property" can only be reasonably interpreted as meaning any and all interest in the other's property, including any increase in the value of Air Comfort. Any other interpretation would completely disregard the clear intent of the parties as expressed through the agreement.

In light of the foregoing language of the agreement, we conclude the family court erred as a matter of law in its interpretation of the parties' agreement. In sum, we hold that absent a showing that the agreement was invalid or should be modified, Rhonda "waived" all property interest in Air Comfort, including any increase in the value of the business during the marriage. See Blue v. Blue, 60 S.W.3d 585 (Ky.App. 2001).

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Rhonda contends on cross-appeal that the family court erred by ordering Glenn to pay only a portion of her attorney's

appeal. We, thus, are limited to reviewing the findings and conclusions made by the arbitrator which were recommended to and adopted by the family court.

fees. Specifically, Rhonda asserts that the court erred by ordering Glenn to pay only \$7,500.00 of the \$24,125.85 in attorney's fees incurred by her.

When attorney's fees are awarded directly to the attorney, the attorney is the real party in interest and, thus, an indispensable party to an appeal from the award. Neidlinger v. Neidlinger, 52 S.W.3d 513 (Ky. 2001). If, however, the fees are awarded to the client as reimbursement for fees previously paid, the client is the real party in interest and the attorney need not be named. Id.

In its Findings of Fact, Conclusions of Law and Judgment, the family court held:

The Petitioner [Glenn] shall pay the sum of \$7,500 as a contribution toward the attorney's fees of the Respondent [Rhonda] from his separate assets awarded in this Judgment. This sum shall be paid on or before thirty (30) days from and after entry of this Judgment. **This sum shall be paid to and is enforceable in the name of Respondent's [Rhonda's] counsel.** Each party shall otherwise pay their own attorney's fees and other costs incurred in this action. (Emphasis added).

In the above judgment, it is clear that the court awarded the attorney's fees directly to Rhonda's attorney and not to Rhonda as reimbursement for fees previously paid. Under these circumstances, it was necessary to name Rhonda's attorney as a party to this cross-appeal. See Neidlinger, 52 S.W.3d 513. As

Rhonda's attorney was not named a party, we decline to address the merits of Rhonda's contention regarding attorney's fees.

Rhonda next asserts the family court erred by not awarding maintenance. Specifically, Rhonda asserts the court failed to make the necessary findings of fact and abused its discretion in denying maintenance.

Whether to award maintenance is a matter within the sound discretion of the trial court. Browning v. Browning, 551 S.W.2d 823 (Ky.App. 1977). However, it is well-settled that a maintenance award must satisfy the elements of Kentucky Revised Statutes (KRS) 403.200(a) and (b). Drake v. Drake, 721 S.W.2d 728 (Ky. App. 1986). To award maintenance under KRS 403.200(a) and (b), the court must find: (1) the spouse seeking maintenance lacks sufficient property, including the marital property apportioned to her, to provide for her reasonable needs; and (2) is unable to support herself through appropriate employment. Id. As the family court treated a portion of Air Comfort as marital property and allocated a part thereof to Rhonda, which we have found to be in error, we believe it proper to vacate the family court's decision not to award maintenance and remand for consideration in light of this Court's opinion holding that Air Comfort is the nonmarital property of Glenn. See Hollon v. Hollon, 623 S.W.2d 898 (Ky. 1981). We do not reach the merits of a maintenance award nor do we suggest by this opinion that

maintenance is warranted. We simply hold that on remand the family court should make necessary findings upon reaching its decision in accordance with KRS 403.200.

For the foregoing reasons, the Findings of Fact, Conclusions of Law and Judgment of the Jefferson Family Court in Appeal No. 2004-CA-002054-MR is affirmed in part, reversed in part, and remanded for proceedings not inconsistent with this opinion, and Cross-Appeal No. 2004-CA-002164-MR is affirmed in part, vacated in part, and remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-
APPELLEE:

John Allen Taylor
Thomas B. Merrill
Louisville, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT:

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