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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001711-MR

VAUGHN MILLER

APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE MATTHEW B. HALL, JUDGE
ACTION NO. 05-CI-01575

FAYE MILLER

APPELLEE

OPINION
REVERSING

*** * * * *

BEFORE: LAMBERT, MOORE AND WINE, JUDGES.

MOORE, JUDGE: Vaughn Miller appeals from an opinion and order of the Hardin Family Court, denying Vaughn's motion to terminate his maintenance obligation. Finding the trial court erred by applying the wrong law, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

After nearly twenty-five years of marriage, Faye Miller filed a petition with the Hardin Circuit Court¹ to dissolve her marriage to Vaughn Miller. The only substantive issues were the division of the parties' assets and debts and the question of maintenance. The parties later entered into a settlement agreement resolving these issues. Regarding the issue of maintenance, the settlement agreement read in pertinent part that

Husband shall pay to Wife the sum of \$ 2900.00 per month beginning on the 1st day of May, 2006 and continuing for 14 years thereafter until the 30th day of April, 2020. Said maintenance obligation shall terminate in the event that the Wife cohabits or remarries, or dies, whichever first occurs.

The family court thereafter entered a decree dissolving the parties' marriage. In the decree, the family court found that the terms of the settlement agreement were not unconscionable and incorporated the agreement by reference.

A year after the entry of the decree, Vaughn filed a motion to terminate his maintenance obligation, accusing Faye of cohabiting with James M. Dawley. Vaughn claimed that Faye had moved into Dawley's home and that her vehicle registration listed Dawley's address as her own. Furthermore, Vaughn alleged that, at the time he filed his motion, Faye had been cohabiting with Dawley for approximately four months.

¹ Faye's petition was originally filed with the Hardin Circuit Court, but the dissolution action was subsequently transferred to the Hardin Family Court.

After an evidentiary hearing was held, the family court entered an opinion and order resolving Vaughn's motion. The family court determined that: (1) Faye sold some of her personal property and moved into Dawley's home; (2) Faye and Dawley shared their meals together, slept in the same bed and had an ongoing sexual relationship; (3) Faye paid \$400.00 per month to Dawley to cover rent and utilities; (4) Faye and Dawley's relationship ended within a few months and Dawley gave Faye thirty days to move out of his home; (5) neither Faye nor Dawley had discussed marriage; and (6) Faye and Dawley did not commingle their funds and did not make any joint purchases of property. According to the family court, Faye and Dawley's "relationship could most aptly be described as 'roommates with benefits' based upon their independent finances yet sexual relationship."

II. STANDARD OF REVIEW

According to KRS 403.180(5), a settlement agreement incorporated into a decree of dissolution is an enforceable contract. Moreover, it is well established in the Commonwealth that the construction of a contract is a question of law for the trial court. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998). Finally, it is well established that we review questions of law *de novo*. *Id.*

III. ANALYSIS

Vaughn argues that the family court erred when it applied the six factors set forth in *Combs v. Combs*, 787 S.W.2d 260 (Ky. 1990) to determine if Faye cohabited. Vaughn contends the Supreme Court held *Combs* and its factors

are not applicable to a case wherein the parties enter into a settlement agreement that specifically provided for termination of maintenance upon the ex-wife's cohabitation.

Vaughn's argument is based on *Cook v. Cook*, 798 S.W.2d 955, 957 (Ky. 1990), wherein the Court explained that the factors in *Combs* actually were directed toward determining whether there has been a change in circumstance sufficient to modify maintenance pursuant to KRS 403.250(1), in the absence of a written separation agreement regarding maintenance and cohabitation. In *Combs*, the relevant issue was not whether there was cohabitation, but rather whether cohabitation resulted in a change of circumstances rendering maintenance unconscionable.

Vaughn is correct that the issue of whether cohabitation has taken place is not the pertinent issue in *Combs*; thus, technically, the family court erred in applying the *Combs* factors. However, in addition to analyzing the case under *Combs*, the court also did a separate analysis pursuant to *Cook*, 798 S.W.2d 955 and *Bennett*, 133 S.W.3d 487.

In Vaughn's brief, he relies heavily on *Bennett* to support termination of his maintenance obligation. In *Bennett*, the ex-husband and the ex-wife entered into a settlement agreement in which they agreed that the ex-husband's maintenance obligation would terminate if the ex-wife cohabited. *Bennett*, 133 S.W.3d at 488. The parties in *Bennett* did not define "cohabitation" in their agreement. *Id.* After the parties' marriage was dissolved, the ex-husband moved

to terminate his maintenance obligation because he alleged that his ex-wife was cohabiting with her paramour. According to the facts in *Bennett*, the ex-wife's paramour spent every night with her and kept clothes at her residence. They had an exclusive, monogamous sexual relationship. The ex-wife paid her housekeeper to wash the paramour's clothes. The ex-wife frequently gave her paramour expensive gifts. The paramour, who was an attorney, provided the ex-wife with free legal services. The ex-wife and paramour took frequent trips and vacations together and slept in the same bed when they traveled together. The paramour regularly used the ex-wife's automobiles and had a charge card giving him access to one of the ex-wife's charge accounts.

Moreover, according to *Bennett*, where cohabitation has not been defined in a settlement agreement, that term has no special meaning beyond its ordinary meaning, and only one of the four dictionaries that the *Bennett* Court consulted defined cohabitation in terms of a couple living as husband and wife. *Id.* at 491. The other three dictionaries defined cohabitation in terms of a couple living together but not married. *Id.* The Court concluded that the ex-wife's and the paramour's relationship qualified as cohabitation "whether considered in light of sexual involvement or living in the same house." *Id.* at 490.

Relying on *Bennett*, Vaughn argues that Faye and Dawley's relationship constituted cohabitation when considered in light of their sexual involvement and the fact that they lived in the same house. Additionally, Vaughn argues that the family court erred in finding that Faye and Dawley's relationship

was not a “love-based” one where the persons involved commingled their assets and held themselves out to be husband and wife. Vaughn insists that the evidence established that Faye and Dawley had “an exclusive, monogamous sexual relationship” like the one in *Bennett*.

Furthermore, in the family court’s opinion and order, it commented that Faye’s and Dawley’s relationship was temporary at best, and, due to the relationship’s short duration, it “was not substantial enough to warrant termination of maintenance.” Vaughn claims that the family court’s determination regarding duration is error. The ordinary definition of cohabitation is not in terms of duration.

The family court determined that the term “cohabit” meant to live “together as husband and wife[.]” The family court concluded that Faye and Dawley did not live together as husband and wife because they did not commingle their assets, their relationship was only temporary, and Faye paid rent to live with Dawley. Consequently, the family court concluded that Faye and Dawley’s conduct did not constitute cohabitation under the terms of the settlement agreement.

The family court’s definition of cohabitation is supported by the definition given by the Court in *Cook*. *Cook* defined cohabitation using *Black’s Law Dictionary*, 5th Edition, as follows:

“To live together as husband and wife. The mutual assumption of those marital rights, duties, and obligations which are usually manifested by married people,

including, but not necessarily dependent on sexual relations.”

Cook, 798 S.W. 2d at 957.

While we cannot disagree with the family court’s definition of cohabit, we do disagree with its application of that definition to the facts. The family court concluded that Faye and Dawley did not commingle their assets. Yet, prior to moving into Dawley’s home, Faye sold some of her furniture. So, while Faye lived with Dawley, she, by necessity, used his furnishings. Consequently, Faye not only benefited from Dawley’s home but also his furnishings. Additionally, Faye paid Dawley \$400.00 per month. Faye, Dawley, and the family court characterized this as rent to help pay the utilities for the home Faye and Dawley shared. Nonetheless, this was a sharing of expenses. While they may not have owned a joint bank account, they obviously commingled their assets to some extent. Therefore, the family court erred when it came to the contrary conclusion.

As Vaughn points out, the family court used the short duration of Faye’s and Dawley’s relationship when it concluded they did not cohabit. Even the definition found in *Black’s*, which is similar to but more stringent than the family court’s, does not use duration to define cohabitation. Based on the court’s own definition of cohabitation as living together as husband and wife, its use of duration to determine cohabitation was erroneous. Duration does not necessarily equate with living together as husband and wife. Some marriages last even less time than Faye’s and Dawley’s relationship, yet, despite such brevity, they are still

considered marriages. Consequently, we disagree with the family court’s conclusion that the short duration of Faye’s and Dawley’s relationship excluded them from living together as husband and wife.

In addition to his other arguments, Vaughn also challenges the admissibility of certain testimony. However, because we reverse for the reasons *supra*, it is unnecessary to address the merits of this argument.

The opinion and order of the Hardin Family Court is reversed, and this matter is remanded with instruction to grant Vaughn’s motion to terminate maintenance.

We pause to point out that parties who enter into a separation agreement have full ownership of these agreements. If they do not want the courts defining the terms of their agreements, they can provide their own definitions of the terms they use, including setting forth what they intend “cohabitate” to mean. To avoid the issue raised at hand, which is similar to many we see, we encourage this.

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