

RENDERED: SEPTEMBER 11, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001169-MR

JOSEPH WARREN GRIGGS

APPELLANT

v. APPEAL FROM CLARK FAMILY COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 03-CI-00547

MARY BETH GRIGGS

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, DIXON AND LAMBERT, JUDGES.

DIXON, JUDGE: Appellant, Joseph Warren Griggs, appeals from an order of the Clark Family Court denying his motion to modify a separation agreement. Finding no error, we affirm.

Joseph Griggs and Appellee, Mary Beth Griggs, were married on May 3, 2002. One child, Trevor Warren Griggs, was born on February 11, 2003. On

October 3, 2003, Joseph filed a petition for dissolution of marriage in the Clark Circuit Court. The parties thereafter took no further action for approximately one year.

Joseph claims in his brief that on February 3, 2005, his attorney received a copy of a separation agreement, signed by Mary, containing a provision allowing the parties to alternate the tax exemption for the minor child each year. However, it was not until October 17, 2005, that Joseph, at the direction of his attorney, went to the office of Mary's attorney to sign the settlement agreement. The record indicates that there had been no further discussions between the parties' counsel relating to the terms of the settlement agreement, and that Joseph believed he signed the agreement that he and his counsel had received in February 2005.

Apparently, according to Joseph's brief, at some point, he and/or his attorney realized that the October 2005 separation agreement was, in fact, different from the February 2005 version. In particular, the October 2005 agreement provided that Mary would receive the child tax exemption every year as opposed to alternate years as had been negotiated. Thereafter, on August 18, 2006, Joseph filed a motion to modify the terms of the separation agreement as it pertained to the tax exemption. The motion was noticed for September 26, 2006. In the interim, however, Mary filed proof of her attendance at the required parent education clinic and the Decree of Dissolution incorporating the separation agreement was entered of record on September 1, 2006, per prior court order. A notation in the record indicates that Joseph's motion was passed by agreement of counsel.

It was not until February 2008, that Joseph renewed his motion to modify the separation agreement, stating that the parties had been unable to reach an agreement as to the tax provision. Following a March 18, 2008, hearing, the Family Court denied the motion finding:

At the time the agreement was signed and entered into the record the Petitioner was represented by counsel. The Petitioner has not asserted any disability that might have prevented him from reading or understanding the agreement at the time he signed it. Failing to read the agreement is not a valid reason for modifying a Separation Agreement almost two years after it was signed.

The Petitioner argues that the original agreement that was proposed almost six months before one was signed included a provision, which alternated the claiming of the minor child for tax purposes. The Petitioner believed he had signed the original agreement from February and that is why he did not read it again. The Court compared the two documents, the Separation Agreement from February and the Separation Agreement from October, and finds that they appear fundamentally different.

Joseph thereafter appealed to this Court.

Joseph argues on appeal that the trial court erred in refusing to modify the settlement agreement relating to the tax exemption. Joseph does not claim the agreement was procured by fraud, but rather that the revised agreement was a mistake and not what was originally negotiated by the parties. Furthermore, Joseph takes issue with the trial court's finding that he should have realized the settlement agreement he signed was entirely different in appearance from the one he and his attorney had previously reviewed. Joseph points out that several months

had passed since he had received the original agreement and he contends that it was the responsibility of Mary's attorney to inform him that the document he signed was different.

KRS 403.180 provides, in relevant part:

(1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for maintenance of either of them, disposition of any property owned by either of them, and custody, support and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

...

(4) If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(a) Unless the separation agreement provides to the contrary, its terms shall be set forth verbatim or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them[.]

...

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

In accordance with KRS 403.180, the decree of dissolution specifically states, “The Separation Agreement filed herein is incorporated as part of this Decree, as the Court finds the Separation Agreement not to be unconscionable, and the parties are ordered to perform the terms of this Agreement.”

Clearly, under KRS 403.180, the parties bear the burden of insuring that the settlement agreement that they submit to the court accurately reflects the terms of their agreement. Furthermore, “[q]uestions relating to the construction, operation and effect of separation agreements between a husband and wife are governed, in general, by the rules and provisions applicable to the case of other contracts generally.” *Richey v. Richey*, 389 S.W.2d 914, 917 (Ky. 1965) (internal citation omitted).

The plain language of the October 2005 settlement agreement that Joseph signed states, “I have read the above Separation Agreement and agree with its terms and conditions” Other than the fact that the February 2005 draft of the settlement agreement was signed by Mary, we find absolutely no evidence of record to support Joseph’s claim that the parties mutually agreed to the terms set forth in that draft. Therefore, Joseph is bound by the clear language to which he agreed. As such, the trial court properly denied his motion to modify the separation agreement.

The order of the Clark Circuit Court denying Appellant, Joseph Warren Griggs’ motion to modify the separation agreement is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald D. Bowling
Lexington, Kentucky

BRIEF FOR APPELLEE:

No Brief for Appellee