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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000302-MR

TERESA ANN TRADER PAGE — APPELLANT

v.

APPEAL FROM HOPKINS FAMILY COURT
HONORABLE SUSAN WESLEY MCCLURE, JUDGE
ACTION NO. 00-CI-00097

GREGORY ALLEN TRADER — APPELLEE

OPINION
REVERSING

** ** ** ** **

BEFORE: ACREE AND MOORE, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

MOORE, JUDGE: Teresa Ann Trader Page appeals from a judgment of the Hopkins County Family Court, which attributed a child support arrearage amount

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

of $30,588.48 to Teresa under a property settlement agreement previously entered into by the parties to this appeal. After careful review of the record, we reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant Teresa Trader (now Page) and Appellee Gregory Trader were married on June 25, 1982. There were three children born of the marriage; namely, Katie Trader, born September 28, 1988; Callie Trader, born October 17, 1991; and Cole Trader, born April 25, 1995. Teresa and Gregory separated on December 31, 1999, and subsequently entered into a property settlement agreement, which includes a provision to deviate from the child support guidelines, on February 2, 2000. This agreement was incorporated into a decree of dissolution of marriage entered May 19, 2000.

In September 2007, Gregory filed a "Motion to Amend the Property Settlement and Child Custody Agreement." This motion involved the amount of equity, if any, to which Teresa was entitled relative to certain marital realty the parties agreed would be sold post-divorce decree and the amount of child support arrearage, if any, Teresa owes to Gregory.

The trial court entered a final and appealable judgment on January 21, 2009. The trial court held that Teresa's child support obligation began in October 2001 and that she should be awarded her share of the marital equity as of said date. Specifically, the trial court found that Gregory owed Teresa $16,959.03 in equity but that Teresa owed Gregory a child support arrearage of $30,588.48.

II. STANDARD OF REVIEW

As are most other aspects of domestic relations law, the establishment, modification, and enforcement of child support are prescribed in their general contours by statute and are largely left, within the statutory parameters, to the sound discretion of the trial court. *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky. App. 2000). In *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001), a panel of this Court discussed the standard of review for appellate courts in child support matters:

> Kentucky trial courts have been given broad discretion in considering a parent's assets and setting correspondingly appropriate child support . . . . However, a trial court's discretion is not unlimited. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

Downing at 454; *see also McKinney v. McKinney*, 257 S.W.3d 130, 133 (Ky. App. 2008).

III. ANALYSIS

A. APPELLEE'S ARGUMENTS ON CR 52.04 AND 52.02.

At the outset, the Court notes that Gregory relies on Kentucky Rule(s) of Civil Procedure (CR) 52.04 and 52.02 to argue that Teresa failed to ask the trial court to make specific findings of fact on a number of issues she presents before this Court. Gregory also states that her failure to do so is fatal to review of those claims on appeal. We disagree. Teresa's arguments before this Court are not based on the trial court's failure to make factual findings. Rather, she clearly

claims error in the trial court's decision-making process based on legal analysis. Hence, Gregory is incorrect that the issues Teresa raises on review fail under the CR 52.04 or 52.02 standards.

B. CHILD SUPPORT CLAIM.

The trial court concluded that Teresa incurred a child support arrearage of $30,588.48. In so finding, the court stated the following:

> When parties enter into agreements regarding child support obligations, they ordinarily designate a "date" on which the obligation becomes effective. Indeed these parties have done just that in their agreed orders regarding subsequent modification of their child support obligations. The agreement incorporated into the decree provides that the "guideline" amount would become effective upon the sale of the real property if the property sold prior to Gregory's return to work. (It is undisputed that Gregory has not, to this date, returned to work).
>
> The Court has previously found that the property was "sold" at the time Gregory refinanced the mortgage (September 2001) . . . . Therefore, the Court finds that Teresa's monthly obligation for the period from October 1, 2001 through September 30, 2007 was $424.84.

The trial court abused its discretion in reaching its conclusion. The record reflects that no specific amount of child support was specified in the "Property Settlement & Child Custody Agreement" and certainly the amount of $424.84 is not specified in that document. The trial court based its calculations on numbers that were included on a child support worksheet that was not mentioned or incorporated into the parties' Property Settlement and Child Custody Agreement.

This Court has previously held that written clauses in documents occurring after a party's signature can be deemed invalid and non-binding on the parties to that document. *See Rowe v. Ratliff's Heirs*, 225 Ky. 70, 7 S.W.2d 852 (1928). Further, information that is written following a party's signature must be referenced in the document preceding the signature if it is to be given full effect. *Kelley v. J.R. Rice Realty Co.*, 235 Ky. 643, 32 S.W.2d 39, 41 (Ky. App. 1930). In the present case, the trial court bound Teresa to child support calculations that were not encompassed by her signature. The record reflects that the child support worksheet was not attached to the agreement. When asked whether the child support worksheet was calculated at the time of the agreement, Gregory testified that "the court did it, I didn't, we didn't [;] the court did." Therefore, there is no evidence that the child support worksheet was ever signed by either party at the time of the agreement.

There is also no evidence in the record that the child support worksheet was ever incorporated by reference into the agreement. In fact, the child support worksheet was not attached to the agreement when it was filed and was only filed later by counsel for Gregory. This child support worksheet was not signed or initialed by the parties. As the child support worksheet was never signed by either party or incorporated by reference into the agreement, the trial court abused its discretion in establishing child support based on calculations that could not be binding on either party.

Further, the agreement evidences that the parties waived child support because of the shared parenting time. Separation agreements or property settlement agreements create contractual rights between the parties. *Wagner v. Wagner*, 821 S.W.2d 819 (Ky. App. 1992). In interpreting a contractual agreement, a contract should be read and construed in the light of the intention of the parties at the time it was entered into. *Johnson v. Stumbo*, 277 Ky. 301, 126 S.W.2d 165 (1938). Generally, ambiguities of contracts are construed against the drafter. *Wolford v. Wolford*, 662 S.W.2d 835 (Ky. 1984). Words, which have no technical meaning in law, must be interpreted in light of the usage and understanding of the common man. This interpretation is often referred to as the plain language test. *Fryman v. Pilot Life Insurance Co.*, 704 S.W.2d 205, 206 (Ky. 1986). Under Kentucky law, the agreement in question created a contract between the parties and is governed by the plain language test.

A plain language reading of the agreement yields the conclusion that the parties waived child support because they were sharing parenting time and not because the parties had not sold the marital residence. Specifically, paragraph six of the parties' separation agreement states:

> Inasmuch as the Wife will be working third shift and Husband is currently disabled and unable to work, the Husband shall be the caregiver for the children during the hours Wife is at work.

Paragraph seven of the agreement further states:

> The parties acknowledge the provisions of the Kentucky Child Support Guidelines and have agreed to modify the

> amounts to be paid. Inasmuch as each of the parties will be providing for the care of the children on a **daily basis**, this is an appropriate case to deviate from the guidelines.

(Emphasis added).

The plain language of the contractual agreement between Teresa and Gregory demonstrates that child support was not to be assessed due to the equal parenting time afforded to both parties. A judgment and divorce decree incorporating the agreement was entered into in 2000 and neither party appealed from it. Regardless of whether the judgment met the requirements of Kentucky Revised Statute(s) (KRS) 403.211, the time for questioning that has long passed.

Further, a review of the record indicates that there is no language supporting the contention that child support would be assessed against Teresa when the marital property is sold. The closest language to support the trial court's ruling is found in paragraph seven of the agreement, which states:

> In the event the parties' real estate sells prior to the Husband returning to work, the wife will be obligated to commence payment of child support pursuant to the Hopkins County Child Support Guidelines. If and when the Husband returns to work, the parties will be required to secure day care and the child support provisions herein waived shall be reassessed and apportioned appropriately to conform to the child support guidelines.

A plain language reading of the above paragraph requires a finding that Teresa is to pay child support if the parties' real estate is sold prior to Gregory returning to work. The record is clear that Gregory has never returned to work.

Further, under paragraph seven referenced above, the child support obligation would not arise until the real estate "sells." The trial court based its ruling on the belief that the real estate sold when Gregory decided to keep the home as evidenced by his refinancing of the home in September 2001. To accomplish the selling of the marital realty, Gregory testified that he put the property "in the hands of the realtor." He further testified that he used two different realtors. So, at one point, Gregory was trying to sell the property to someone other than himself. However, he clearly testified that he decided to keep the marital property and not sell it.

The terms of the agreement do not reference "refinancing," only selling. If the plain language test is to be applied, the property was never sold and Teresa's child support obligation never arose. Further, when Gregory refinanced the marital realty, he did not sell it to himself in that he never gave Teresa her portion of the equity in the property. No money ever exchanged hands. At best, Teresa's child support obligation arose when she did, indeed, receive her share of the equity. Teresa did not receive her share of the equity until a January 21, 2009 decision of the lower court.

We note further language in the agreement that states that "the child support provisions herein waived shall be reassessed and apportioned appropriately to conform to the child support guidelines." Therefore, the child support obligation was not automatically set by this language. This language merely provided an avenue to reassess the obligation at a later date. Gregory only sought

to have Teresa's child support obligation "reassessed" as of October 2007 when he filed a motion to do so. Prior to October 2007, Gregory testified he never filed a motion to have child support established.

Deviating from the child support guidelines based on percentages of parenting time has been recognized by Kentucky courts. *See Downey v. Rogers*, 847 S.W.2d 63, 64 (Ky. App. 1993); *Brown v. Brown*, 952 S.W.2d 707 (Ky. App. 1997); *Plattner v. Plattner*, 228 S.W.3d 577 (Ky. App. 2007). The parties chose to do so here. Additionally, there is no evidence in the record that Gregory ever returned to work or that he sold the martial residence, the only actions under the agreement that would have triggered Teresa's child support obligation. Therefore, we find that the trial court abused its discretion in failing to follow the plain language of the agreement as required by Kentucky law.

C. CLAIM UNDER KRS 403.212.

The trial court found that "Teresa's obligation to remit child support began October 1, 2001 at the rate computed pursuant to the Guidelines and to which the parties had agreed, namely, $424.84 per month." The trial court further found that Teresa's monthly obligation for the period from October 1, 2001 through September 30, 2007 was $30,588.48.

KRS 403.213 states:

> Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18).

The child support worksheet that the trial court utilized to surmise certain arrearages attributable to Teresa was support for three children: Katie Trader, born September 28, 1988; Callie Trader, born October 17, 1991; and Cole Trader, born April 25, 1995. Based on the timeframe the trial court utilized in determining its child support calculation (October 1, 2001 through September 30, 2007), the oldest daughter, Katie, would have turned eighteen on September 28, 2006.

However, the trial court calculated the child support and failed to take into account the change in age of the oldest daughter. From September 2006 to September 2007, child support should not have been calculated to include Katie, who turned eighteen. During this period only two of the parties' children would have been eligible for child support. Therefore, the trial court misapplied KRS 403.213 and erred in calculating the child support obligation.

Accordingly, the order of the Hopkins County Family Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ben Leonard
Dawson Springs, Kentucky

BRIEF FOR APPELLEE:

James (Chip) Adams II
Madisonville, Kentucky