

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001068-MR

TIMOTHY JOHN DOBBS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 06-CI-00274

LORETTA BETH DOBBS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Timothy Dobbs appeals from a decree of dissolution in which the Pulaski Circuit Court adopted a separation agreement and used it to set maintenance. Mr. Dobbs argues that the separation agreement was only supposed to be applicable for the legal separation and not utilized in the case of divorce. Loretta Dobbs argues that the trial court correctly incorporated the separation agreement into the divorce decree. We agree with Ms. Dobbs and affirm.

Mr. and Ms. Dobbs were married on July 16, 1992. The parties separated on February 25, 2006. On October 25, 2007, Mr. Dobbs filed a petition for legal separation. At that time, the parties filed a separation agreement in which they settled the issues of property rights, assets, and maintenance. As is pertinent to this case, the agreement stated that Mr. Dobbs was to pay Ms. Dobbs \$230 per month as maintenance. On October 29, 2007, the trial court entered a decree of legal separation. The parties separated with hopes of eventually reconciling.

The parties were unable to reconcile and two years later, Mr. Dobbs filed a motion to convert the legal separation into a divorce proceeding. In that motion, Mr. Dobbs stated that the separation agreement should not be utilized in the divorce proceedings and requested the court to resolve all the issues concerning the divorce. Both parties were deposed, counsel filed trial memoranda, and the matter was submitted to the trial court. On May 4, 2010, the trial court entered a decree of dissolution in which it determined the separation agreement was valid and binding on the court. The court incorporated the agreement into the decree and used it to settle all issues. This appeal followed.

Mr. Dobbs' only argument on appeal is that the separation agreement was only applicable during the period of separation and was not intended to settle any issues should the parties decide to divorce. The trial court relied on KRS 403.180(2) to find that the separation agreement was binding. KRS 403.180(2) states:

In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement . . . 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.

We agree with the trial court that this statute controls the use of the separation agreement. The agreement states that Mr. Dobbs is to pay Ms. Dobbs \$230 per month in maintenance. The agreement was not modified in any way after it was executed. The terms of the agreement are binding on the court.

The court also found that Mr. Dobbs had not proven that the agreement was unconscionable. Mr. Dobbs states that after the separation agreement was executed, he quit his job due to an injury. He claims he is not making as much money as he previously was and is unable to make maintenance payments. The trial court found that even though Mr. Dobbs lost his job, he had found other employment, part time as a bus driver and full time as a store clerk. The court found that these two jobs provide Mr. Dobbs with an income similar to that he made previously. The evidence in the record supports this conclusion.

Based on the above, we affirm the judgment of the trial court. KRS 403.180(2) bound the court to the terms of the separation agreement and Mr. Dobbs was unable to prove the agreement was unconscionable.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Bruce W. Singleton
Somerset, Kentucky

BRIEF FOR APPELLEE:

Beverly Ann Shea
Appalachian Research and Defense
Fund of Kentucky, Inc.
Somerset, Kentucky