

RENDERED: JANUARY 7, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001520-MR

MISSOURI GRAVES, GUARDIAN  
OF LAKESHA S. BREY

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE T. STEVEN BLAND, JUDGE  
ACTION NO. 03-CI-02329

ROBERT E. BREY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CAPERTON, AND CLAYTON, JUDGES.

CAPERTON, JUDGE: The Appellant, Missouri Graves, mother and guardian of Lakesha Brey, appeals the July 2, 2007, order of the Hardin Circuit Court denying her motion to set aside the settlement contract resulting from the divorce between Lakesha Brey and the Appellee, Lakesha's ex-husband, Robert Brey.

On appeal, Graves argues that the court should have granted the motion because her daughter Lakesha was mentally incompetent at the time that she entered into the settlement agreement. Robert has not filed a brief in response. Having reviewed the record, the arguments made by Graves, and the applicable law, we affirm.

According to Graves, Lakesha was diagnosed with a mental illness in 2001. Pursuant to a March 14, 2006, order of the Circuit Court in Cook County, Illinois, Graves was appointed as Lakesha's guardian, and was given authority to make decisions concerning the person of Lakesha herself, but not with respect to her estate or financial affairs.<sup>1</sup> The two currently reside in Chicago.

As noted, Lakesha was formerly married to the Appellee, Robert E. Brey. The parties were divorced via a decree of dissolution entered by the Hardin Family Court on April 12, 2004. That decree approved a settlement contract made between the parties and signed by them on December 19, 2003. In so doing, the court specifically found that the settlement contract was not unconscionable. According to Graves, at the time of the divorce Lakesha was receiving treatment at Ireland Army Hospital in Fort Knox and had stopped taking her medication.

Graves now asserts that at the time Lakesha signed the December 13, 2003, settlement contract accepting a lump sum maintenance amount of \$7,000

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<sup>1</sup> As the trial court notes, the Illinois court specifically struck through the provision on the form order that would have found Lakesha "totally unable to manage his/her estate or financial affairs." The court noted that the Illinois order also appeared to have struck through the section that would have required the guardian to make a financial accounting and inventory of the assets of Lakesha within a certain time period.

instead of ongoing payments and terminating her interest in Robert's military retirement, Lakesha lacked the mental capacity to understand it and did not have counsel to properly advise her. Essentially, Graves argues that Robert coerced Lakesha into signing the agreement.

In reviewing these arguments the court below found, based upon a review of the order appointing Graves as Lakesha's guardian, that it was facially similar to orders that would be issued in Kentucky district courts appointing individuals to act as limited guardians to manage the living arrangements and other personal affairs of another person, although not extending that authority to the person's financial affairs. Accordingly, the court found that the Illinois order was likely not sufficient authority for Graves to bring the current action in Kentucky.

Regardless, the court found that the order was of no evidentiary value in determining Lakesha's mental state as of December 19, 2003, when she entered into the agreement. Following a review of the record, the court could find no expert medical evidence concerning Lakesha's mental status on the date she entered into the settlement agreement, and noted that the only evidence offered was anecdotal testimony from Graves and Graves's sister. According to the court, however, both Graves and Graves's sister had limited contact with Lakesha during that time. Further, the court noted that Robert testified that Lakesha was having no mental problems at the time of the divorce, that the contract was negotiated amicably between them, and that he never would have agreed to allow Lakesha

joint custody of their children had he had concerns about her mental state. Thus, the court concluded that the evidence presented by Graves on Lakesha's behalf failed to prove that she was suffering from any mental condition when she entered into the agreement.

Concerning whether the contract itself was unconscionable, the court noted that the trial court is in the best position to evaluate settlement agreements and whether or not they are conscionable. The agreement was found not to be unconscionable by the Hardin Family Court in 2004. The court below declined to disturb that finding in 2007. As the court noted, absent any evidence of fraud, deceit, mental instability, or overreaching, the question is simply one of fundamental unfairness. The court did not find the agreement to be fundamentally unfair. Accordingly, the court denied Graves's motion to set aside the settlement agreement. It is from that order that Graves now appeals to this Court.

In reviewing the arguments made by Graves, we find that we review the determination of the trial court as to the conscionability of a property settlement agreement under a clearly erroneous standard of review. *See Peterson v. Peterson*, 583 S.W.2d 707, 712 (Ky. 1979).

In her brief to this Court, Graves states that she would like to "present the record" to this Court from five hospitals that Lakesha entered into, both before and after the divorce, to establish that Lakesha was mentally ill and incompetent to enter into the settlement agreement. Unfortunately for Graves, we note that pursuant to her September 28, 2007, designation of record on appeal, she

specifically included only “the motion heard on June 27, 2006; all testimony, including objections and any bench conferences, from the hearing to set aside the Settlement Agreement of this action held on March 7, 2007.” Certainly, our law is clear that pursuant to Kentucky Rules of Civil Procedure (CR) 75.01, an appellant is required to designate all portions of the record that he or she wishes to be included on appeal. Having not received the records that Graves references, this Court’s determination of the issues will rely on the records that were designated and included.

Having done so, we are in agreement with the court below in its refusal to set aside the settlement agreement at issue. As the court correctly noted, people enter into settlement agreements for various reasons and the fact that an agreement may not be perfectly balanced does not make it fundamentally unfair. A review of the agreement reveals that Robert, despite being the primary residential custodian, waived his claim to child support from Lakesha. He also agreed to pay her a lump sum maintenance of \$7,000.00. While it is true that Lakesha did waive her claim to Robert’s military pension, Robert explained that Lakesha was at the time planning to enter the military herself where she would have accrued her own retirement.<sup>2</sup>

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<sup>2</sup> This is evident not only from Robert’s testimony but also from the settlement agreement itself, which provides that, “The husband shall maintain medical and hospitalization insurance on the wife for a period of three (3) years commencing upon the entry of a Decree of Dissolution of Marriage, unless the wife enters the military service at which time this obligation shall terminate.”

As the court below correctly noted, it is the trial court which is in the best position to assess whether a settlement agreement is conscionable or not. *See Shraberg v. Shraberg*, 939 S.W.2d 330 (Ky. 1997); and *Peterson v. Peterson*, 583 S.W.2d 707 (Ky.App. 1979). In the matter *sub judice*, it is clear that in 2004, at the time it entered the decree dissolving Robert and Lakesha's marriage, the court made such an assessment. Upon review of the record, we find no reason to disturb that finding now. We do not find the agreement unconscionable, nor do we find any substantive evidence to support Graves's claim that Lakesha was mentally incompetent when she entered into the agreement.

Wherefore, for the foregoing reasons we hereby affirm the July 2, 2007, order of the Hardin Family Court denying Graves's motion to set aside the settlement agreement.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE:

Missouri Graves, *Pro Se*  
Chicago, Illinois