

RENDERED: AUGUST 19, 2011; 10:00 A.M.

NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000768-MR

BRIAN ALLEN SEWELL

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WALTER F. MAGUIRE, JUDGE
ACTION NO. 09-CI-00174

CRYSTAL SEWELL

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, NICKELL, AND WINE, JUDGES.

WINE, JUDGE: Brian Allen Sewell appeals from an order of the Pulaski Family Court denying his motion for relief from a maintenance order set out in the decree dissolving his marriage to Crystal Sewell. Since the decree incorporated the parties' agreement regarding maintenance, we conclude that the trial court was not required to make the findings set out in Kentucky Revised Statute ("KRS")

403.200. We further conclude that Brian has failed to show any grounds for relief from the maintenance award either under Kentucky Rule of Civil Procedure (“CR”) 60.02 or KRS 403.250. Hence, we affirm.

Brian Allen and Crystal Sewell were married in 2004 and separated in October 2008. On February 9, 2009, they filed a joint petition for dissolution of the marriage. The petition included an agreement between the parties regarding division of property and debts and maintenance. In pertinent part, Brian agreed to pay \$400.00 per month in maintenance for fifteen years. The following day, Brian testified in a deposition that he had agreed to the terms of the agreement as outlined in the petition.

On March 19, 2009, the trial court entered findings of fact, conclusions of law, and a decree of dissolution of the marriage. The court found that the terms of the agreement were not unconscionable and incorporated them into the judgment. However, on September 28, 2009, Crystal filed a motion to show cause why Brian had not complied with the terms of the agreement regarding the division of property. After Brian failed to appear for the hearing, the trial court held him in contempt and directed him to comply with the judgment.

In response, Brian filed a motion to vacate pursuant to CR 60.02 seeking, among other things, to be relieved from his maintenance obligation. He also requested more specific findings regarding maintenance. After considering the arguments of counsel, the trial court denied Brian’s motion and further ordered him to pay Crystal’s attorney’s fees. Brian now appeals to this Court.

As an initial matter, Brian does not allege any particular grounds for relief provided under CR 60.02. Rather, he argues only that the trial court failed to make the necessary findings for awarding maintenance set forth in KRS 403.200. We disagree.

A property settlement agreement is an enforceable contract between the parties, and it will not be set aside absent some showing of fraud, undue influence, overreaching or manifest unfairness. *Pursley v. Pursley*, 144 S.W.3d 820, 826 (Ky. 2004). Furthermore, when a settlement agreement is adopted into a decree of dissolution, it is enforceable by all remedies available for enforcement of a judgment, including contempt. KRS 403.180(5). In this case, the judgment incorporating the settlement agreement was final and thus not subject to modification except under the terms of CR 60.02 or as otherwise authorized by law. Brian did not state any grounds for relief under CR 60.02.

Furthermore, we disagree with Brian that the trial court was required to make findings under KRS 403.200 before awarding maintenance. While such findings are necessary when the trial court sets maintenance, the court's adoption of a settlement agreement is governed by the provisions of KRS 403.180. In a proceeding for dissolution of marriage, the terms of a separation agreement, except those providing for child custody, support and visitation, are binding on the trial court unless it finds that the separation agreement is unconscionable. KRS 403.180(2). Furthermore, the parties were at liberty to negotiate settlement terms which are more favorable than those provided by statute. *See Pursley, supra* at

824 (parties may agree to child support in excess of statutory guidelines).

Therefore, we conclude the maintenance award is governed by the more specific terms of KRS 403.180. Consequently, the trial was not obligated to make findings regarding maintenance as set forth in KRS 403.200.

Finally, we conclude that Brian has not shown any circumstances which would warrant a modification of the maintenance award. At the time the parties entered into the agreement, a maintenance award in a fixed amount to be paid over a definite period of time was not subject to modification either before or after its termination. *Dame v. Dame*, 628 S.W.2d 625, 626 (Ky. 1982). The Kentucky Supreme Court recently changed this rule in *Woodson v. Woodson*, 338 S.W.3d 261 (Ky. 2011), holding that such awards are subject to modification under the provisions of KRS 403.250(1). *Id.* at 263. However, in this case, the trial court specifically found that the parties had negotiated the maintenance terms based on an arms-length transaction. Brian does not allege any changed circumstances which are so substantial and continuing as to make the terms of the agreement unconscionable. KR 403.250(1). Therefore, there is no basis to modify the award.

Accordingly, the order of the Pulaski Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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