

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001338-MR

LCG PROPERTIES, LLC

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SHULTZ GIBSON, JUDGE
ACTION NO. 12-CI-005079

SONYA GLYNN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE AND NICKELL, JUDGES.

DIXON, JUDGE: Appellant, LCG Properties, LLC (LCG Properties) appeals from an order of the Jefferson Circuit Court granting summary judgment in favor of Appellee, Sonya Glynn, and dismissing its claims for declaratory relief and breach of contract. Finding no error, we affirm.

Larry and Sonya Glenn were married on February 28, 2004. One day prior to the marriage, the Glynnns entered into an antenuptial agreement that

included a provision whereby Sonya agreed to waive all marital interest in any property owned by Larry. Several years later, on June 4, 2008, Larry Glenn formed LCG Properties. At the outset, Larry was the sole owner of LCG Properties. However, in December 2010, Larry conveyed a 5% ownership interest to Sonya. The Membership Purchase Agreement was backdated to allegedly show the parties' intent that the sale be effective as of January 1, 2010. According to the language of the Membership Purchase Agreement, the consideration for the 5% ownership interest in LCG Properties was Sonya's agreement to waive any claim of marital property interest in LCG Properties. Specifically, the Membership Agreement provided:

The aggregate purchase price for 5% of Larry Glynn's membership interest shall consist of Sonya Glenn's waiver of any kind of marital property interest in LCG Properties, LLC, any dower and curtesy interest in LCG Properties, LLC. Thus, the alleged purchase price for the buyer is that Sonya Glynn waives any claim of any time for any reason now or in the future that she may have by statute or law in Larry Glynn's membership interest in LCG Properties, LLC.

At the same time, Larry and Sonya allegedly executed two other documents – an Amended Operating Agreement and a Buy-Sell Agreement.

On August 11, 2011, Larry filed a petition in the Jefferson Family Court seeking a decree of dissolution of marriage and enforcement of the antenuptial agreement. In her response to the petition, Sonya specifically challenged the validity of the antenuptial agreement.

Thereafter, on September 21, 2012, LCG Properties filed an action in the Jefferson Circuit Court seeking a declaratory judgment that the Membership Purchase Agreement, the Buy-Sell Agreement, and amended Operating Agreement were all valid and enforceable, and that Larry owned a 95% nonmarital interest in LCG Properties. LCG Properties also asserted a breach of contract claim seeking attorneys' fees and expenses incurred as a result of Sonya claiming she had a marital interest in the business. In lieu of filing an answer, Sonya moved for summary judgment challenging both the authenticity of the Membership Purchase Agreement and LCG Properties' standing to bring the declaratory judgment action, as well as arguing that Larry was attempting to circumvent the discretion of the family court to allocate and distribute marital property in the pending divorce proceedings. In the alternative, Sonya requested a stay of the proceedings pending the resolution of the divorce case.

On July 5, 2013, the trial court granted Sonya's motion for summary judgment. Relying upon the decision in *General Drivers, Warehouseman & Helpers Local Union No. 89 v. Chandler*, 968 S.W.2d 680, 684 (Ky. App. 1998), the trial court ruled that a declaratory judgment action cannot be invoked to determine an issue presented in another pending suit. Finding that the issues in LCG Properties' declaratory judgment action were also pending in the divorce action, the trial court concluded:

The validity of the Antenuptial Agreement must be determined by the Family Court before there can be a proper disposition of the property between Mr. Glynn

and [Sonya Glynn] by the Family Court. Likewise, the declaration which [LCG Properties] is seeking in this case is also highly dependent upon the Family Court's finding the Antenuptial Agreement valid, especially since Mr. Glynn formed [LCG Properties] during his marriage with [Sonya Glynn]. It appears that Mr. Glynn, through [LCG Properties], is asking this Court to determine an issue which is also presented before the Jefferson Family Court in the divorce proceeding, as the Family Court will likely have to determine the validity of the Membership Purchase Agreement if it is placed in question in order for it to determine the proper disposition of [LCG Properties] between [Sonya Glynn] and Mr. Glynn. As such, it does not appear that the action brought by [LCG Properties] under the declaratory judgment act is proper as a matter of law.

LCG Properties thereafter appealed to this Court.

Our standard of review on appeal of a summary judgment is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.”

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Kentucky Rules of Civil Procedure 56.03. The trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.”

Steelvest v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991).

Summary judgment is proper only “where the movant shows that the adverse party could not prevail under any circumstances.” *Id.*

LCG Properties first argues that the trial court’s reliance on the *Chandler* case is erroneous and did not support dismissal of the action. LCG Properties contends that, unlike *Chandler*, there exists an actual controversy between the parties herein concerning the enforcement of the Membership Purchase Agreement, and that the issues pertaining to the agreement are not pending in the family court. Further, LCG Properties argues that enforceability of the Membership Purchase Agreement is not contingent upon the family court’s determination of whether the antenuptial agreement is valid. Instead, the Membership Purchase Agreement is a separate and enforceable contract wherein Sonya agreed to waive any claim to Larry’s 95% interest in LCG Properties.

As the trial court herein noted, Kentucky Revised Statutes (KRS) 418.040 provides that in any action in a court of record wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief, and the court may make a binding judgment. As a rule, the trial court has broad discretion to grant declaratory relief. *Mammoth Medical, Inc. v. Bunnell*, 265 S.W.3d 205, 209 (Ky. 2008). The party seeking relief must show that an actual, justiciable controversy exists as proceedings for a declaratory judgment must not merely seek advisory answers to abstract questions. *Axton v. Goodman*, 205 Ky. 382, 265 S.W. 806 (1924). Although Kentucky’s Declaratory Judgment Act must be liberally applied to

effectuate its purpose, it cannot replace our existing system for resolving disputes between parties. *Mammoth Medical, Inc.*, 265 S.W.3d at 210. For example, an action for a declaratory judgment cannot be instituted to determine an issue presented or to secure a determination of substantive rights involved in a pending suit. *Chandler*, 968 S.W.2d at 684; *see also Schick v. Schick*, 240 S.W.2d 533 (Ky. 1951))

Pursuant to KRS 23A.100(1)(e), the Family Court retains jurisdiction over the “[e]quitable distribution of property in dissolution cases[.]” We agree with the trial court that the validity of the antenuptial agreement is a threshold determination that must be made by the family court before there can be a proper disposition of property between Larry and Sonya. If the agreement is upheld, the Membership Purchase Agreement necessarily becomes moot since Sonya had already relinquished any claim to Larry’s property. If the antenuptial agreement is found invalid, however, then the enforceability of the Membership Purchase Agreement becomes an issue since LCG Properties was formed during the marriage. Nevertheless, it is clear that numerous issues surrounding the execution and validity of both agreements have already been raised and litigated in the dissolution proceedings. In addition to challenging the antenuptial agreement, Sonya testified in the family court that she did not recall signing the Membership Purchase Agreement or even being aware of its existence until after the initiation of the divorce action, thus raising a question as to the validity of the document.

We find no merit in LCG Properties' claim that the family court cannot adjudicate the enforceability of the Membership Purchase Agreement since it is a party to the agreement but not a party in the divorce proceedings. The plain language of the Membership Purchase Agreement provides as follows:

This Membership Purchase Agreement ("Agreement") is made and entered into 1 day of January, 2010, by and among Larry Glynn ("Seller"), and Sonya Glynn ("Purchaser")

Thus, contrary to the arguments set forth by LCG Properties, it is obvious that LCG Properties is the subject of the agreement, not a party thereto. As Larry and Sonya are both parties to the agreement, the family court has jurisdiction to adjudicate the Membership Purchase Agreement's validity in the dissolution proceedings.

We are of the opinion that because both the antenuptial agreement and the Membership Purchase Agreement relate to property that may or not be deemed marital, the family court has the proper jurisdiction over the issues presented. Accordingly, the trial court did not err in granting Sonya's motion for summary judgment and dismissing LCG Properties' declaratory judgment action.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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