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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000133-ME

JOSEPH W. SPALDING — APPELLANT

v.

APPEAL FROM FRANKLIN FAMILY COURT
HONORABLE SQUIRE WILLIAMS, III, JUDGE
ACTION NO. 02-CI-00310

CYNTHIA B. SPALDING — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; JONES AND NICKELL, JUDGES.

ACREE, CHIEF JUDGE: Appellant, Joseph Spalding, appeals the Franklin Family Court's December 2, 2013 Order denying his motion to modify child support for his adult daughter. Finding no error, we affirm.

I. Background

Joseph and Cynthia Spalding married in 1988 and had two children. In April 2002, the parties divorced and incorporated into their Decree of

Dissolution a written Settlement Agreement (Agreement) executed in December, 2001. The parties' dispute centers on the proper interpretation of the Agreement's provisions addressing Joseph's obligation to provide child support.

The Agreement provides that Joseph pay Cynthia $1,000[1] per month in child support until "child or children reach the age of 18 . . . ." However, the Agreement also provides that in the event either child attends college, Joseph's "child support [obligation] for that child or children would continue until age 22, and the parties would share equally in the cost of the tuition, room, board, and books for the child or children while in college." The Agreement also affirmed explicitly that both Joseph and Cynthia understood its terms.

Joseph and Cynthia's oldest child has attended the University of Kentucky for the last four years, electing to reside on or near campus instead of at Cynthia's home. During that time, Joseph has continued to pay both child support and one-half of all college-related costs as required by Agreement.

On October 21, 2013, Joseph filed a motion to modify his child support obligation with respect to his oldest child. Specifically, Joseph requested the family court absolve him of his responsibility to pay child support because his child no longer lived at home. The family court denied Joseph's motion on December 2, 2013, prompting Joseph to file a motion with the family court to alter, amend, or vacate the December 2, 2013 Order. The family court likewise denied that motion. Joseph now appeals the family court's denial of his motions to

[1] The Court later entered an agreed order amending the amount to $1,550.00 per month in December 2005.

modify his child support requirements, alleging the Agreement's provisions regarding child support are ambiguous and contrary to the parties' intent.

II. Standard of Review

The terms of a settlement agreement incorporated in a decree of dissolution of marriage are enforceable as contract terms. KRS 403.180(5). Contract interpretation is a matter of law; therefore we review *de novo* the family court's reading of the settlement agreement. *Cinelli v. Ward,* 997 S.W.2d 474, 476 (Ky. App. 1998).

III. Analysis

Joseph now argues the family court erred in interpreting the Agreement's terms regarding child support. Specifically, Joseph maintains that while he and Cynthia intended to divide equally the costs of tuition, room and board, and books of children attending college, they did not intend to continue child support in addition to splitting the room and board for a child who no longer resided at the marital residence. According to Joseph, it would be illogical for him to pay both his share of college expenses and child support while his children lived away from home because such payments would be tantamount to spousal maintenance, not child support. While Joseph concedes that he would be responsible for child support if his child lived at home during college, he argues that his support payments are currently "not going toward food or any of [his child's] basic necessities," and therefore he should not be required to pay the additional sum.

However, Joseph's reading ignores the Agreement's plain meaning, and thus his argument fails.

A contract is not ambiguous if a reasonable person would find its terms susceptible to only one meaning. *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.,* 94 S.W.3d 381, 385 (Ky.App.2002). Here, the language of the Agreement is plain and unambiguous – Joseph agreed that should his child attend college, "child support for that child or children would continue until age 22, *and* [he] would share equally in the cost of the tuition, room, board, and books for the child." (Agreement, p. 3-4; emphasis added). Use of the conjunctive "and" was a choice of the parties and the word "and" is in no way ambiguous. It makes the sentence susceptible to only one meaning: Joseph agreed to maintain both his child support obligations *and* to pay one-half of the specified college expenses.

An unambiguous written contract must be strictly enforced according to the plain meaning of its express terms. *Allen v. Lawyers Mut. Ins. Co. of Kentucky,* 216 S.W.3d 657 (Ky. App. 2007). Therefore, even if Joseph is correct that, prior to executing the Agreement, he and Cynthia intended something else, a contrary intent was unequivocally manifested in the terms to which they set their hand and signed their names. We are powerless to interpret a contract contrary to such a plain meaning. *Abney v. Nationwide Mut. Ins. Co.,* 215 S.W.3d 699, 703 (Ky. 2006).

IV. Conclusion

The Franklin Family Court's December 2, 2013 Order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kevin P. Fox
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Nathan Goins
Frankfort, Kentucky