

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-002046-MR

BRENDA HIBBARD MAYS AND
ELVERT SHELBY MAYS

APPELLANTS

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE DANIEL BALLOU, JUDGE
ACTION NO. 08-CI-00626

(NO APPELLEE)

APPELLEE

OPINION
AFFIRMING
* * * * *

BEFORE: JONES, J. LAMBERT, AND MAZE, JUDGES.

JONES, JUDGE: This is an appeal from a Whitley Circuit Court order denying Appellants' petition for an annulment of their divorce. After careful review, we affirm because the Appellants did not present the circuit court with a verified petition as required by statute. Accordingly, the circuit court had no jurisdiction to grant the requested relief.

I. FACTUAL AND PROCEDURAL BACKGROUND

Elvert Shelby Mays and Brenda Hibbard Mays (hereinafter referred to as “Shelby” and “Brenda”) married on May 2, 1960. Together they have two sons, three granddaughters and two great-granddaughters. They currently reside together in Whitley County, Kentucky.

All appeared well with Shelby and Brenda until 2008 when Shelby moved out of the marital residence. According to Shelby and Brenda, a female friend of theirs, Glenda, convinced Shelby that she needed his help to get away from her then-husband, Red. Allegedly, she promised to give Shelby a large sum of money in exchange for his help. Shelby agreed to help Glenda, at which time he moved out of the home he had shared with Brenda.

On February 5, 2010, Shelby and Brenda's marriage was dissolved by a decree entered by the Whitley Circuit Court. Therein, the court found that Shelby and Brenda had been separated since June of 2008 and that their marriage was irretrievably broken. A property settlement agreement was incorporated into the decree.¹

After the dissolution, Shelby moved to Tennessee with Glenda. Shelby and Glenda were married on February 23, 2010. According to Shelby, he agreed to marry Glenda because she told him that unless they were married her former husband could access the large sum of money she expected to receive.

¹ Brenda was represented by counsel during the dissolution proceedings. Shelby appeared *pro se*. The dissolution proceedings lasted from approximately June 12, 2009, until the dissolution decree was entered by the trial court on February 5, 2010.

When no money was forthcoming, Shelby and Glenda filed for annulment of their marriage in Knox Circuit Court. Therein, they averred that they used incorrect social security numbers to get their marriage license, which was subsequently filled out and signed by "an animal control agent" without a ceremony having been performed. For his part, Shelby also averred that their marriage was "planned because of a fraudulent deal, where Glenda promised [him] that she had a million dollar settlement check from the University of the Cumberlands, which was untrue." For her part, Glenda averred that an annulment was also in order because Shelby has erectile dysfunction and could not have sexual relations with her. The Knox Circuit Court granted the requested annulment by order entered June 27, 2011.

Some three years later, on August 29, 2014, Shelby and Brenda filed a motion seeking to have their February 2010 divorce annulled. Therein, they averred that they "reconciled" approximately a year after the divorce and have lived together since "with love and affection." They signed the petition by their own hands, but it does not indicate that anyone verified or witnessed the signatures.

The circuit court overruled their petition on July 8, 2014. After their petition was overruled Shelby and Brenda attempted to re-file with the court

several times, but were denied each time. A final order denying their petition was entered on December 10, 2014. This appeal followed.

II. ANALYSIS

Initially, we note that as a general matter, an appellate court will not set aside marriage dissolution under Kentucky Rules of Civil Procedure (CR) 60.02. *See Cottrell v. Cottrell*, 502 S.W.2d 80 (Ky. 1973). However, an annulment of divorce differs from an action to set aside a judgment under CR 60.02 because it is a consensual action in which both parties request the court to void the prior divorce decree.

Kentucky Revised Statutes 403.041 provides as follows: "A judgment of divorce from the bond of matrimony may be annulled by the court which rendered it, upon a petition *verified* by the parties in person so requesting." The key word for the purposes of this appeal is *verified*.

Shelby and Brenda signed their petition. However, our Supreme Court has made clear that a signature, standing alone, does not constitute a verification. *See Taylor v. Kentucky Unemployment Ins. Comm'n*, 382 S.W.3d 826, 834 (Ky. 2012) ("The verification process is obviously distinguishable from a mere signature, even if that signature is deemed by CR 11 to qualify for the enhanced status of a 'certification.'"). "'Verification' is defined as 'a formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.'" *Id.* (citations omitted).

While Shelby and Brenda presented the circuit court with a signed petition, they did not present it with a verified one as the statute required. Because their petition did not comply with the statute, the circuit court lacked the authority to grant it. *See id.* ("[O]ne of the conditions precedent to exercise of judicial power by the circuit court was not met, in that the petition for judicial review was merely signed by claimant's attorney without verification.").

Accordingly, we affirm the Whitley Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Elvert S. Mays

Brenda H. Mays

Pro se

Williamsburg, Kentucky