

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000817-MR

JENNIFER A. BRYANT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE WILLIAMS III, JUDGE
ACTION NO. 06-CI-01269

BRIAN STOWERS

APPELLEE

OPINION
AFFIRMING IN PART AND REVERSING IN PART

** ** * ** * ** *

BEFORE: ACREE, JONES, AND NICKELL, JUDGES.

JONES, JUDGE: The Appellant, Jennifer A. Bryant, requests us to review the Franklin Family Court's May 1, 2014 Order which (1) "set aside" the parties' prior Separation and Property Settlement Agreement on the basis that it was unconscionable and (2) denied her motion for contempt. For the reasons set forth

below, we AFFIRM as related to the contempt issue and REVERSE as related to the modification of the separation agreement.

I. Background

Bryant and Stowers were married on November 30, 2001. On September 11, 2006, Stowers filed a verified petition for dissolution of marriage in the Franklin Circuit Court. A little less than a year later, on June 14, 2007, the parties entered into a property settlement agreement. Therein, the parties agreed to the division of their real and personal property as well to issues concerning spousal maintenance.

Important to this dispute, the parties agreed that Bryant would sell her 250 shares in the parties' joint business, Continental Maintenance Supply Inc.

("Continental"), to Stowers under the following terms:

Husband agrees to pay Wife the sum of \$4,500.00 per month for a sum of thirty (30) years or three hundred and sixty (360 months). It is agreed that the Wife shall be entitled to retain said shares of stock in her name and possession as security for Husband's payments provided for herein. In the event that the Wife shall predecease the completion of all payments provided herein, Wife's estate shall be entitled to the payments agreed upon herein and shall likewise be required to transfer the Wife's interest in such stock to Husband upon completion of payments. If Husband shall predecease Wife, the Wife shall transfer her interest in such stock to the Husband's estate for the unpaid balance due Wife.

The Agreement also provided that Stowers was to (1) pay Bryant "maintenance in the sum of two thousand dollars (\$2,000.00) monthly for a period of thirty (30) years, or until her death or remarriage, whichever shall first occur;"

(2) pay the mortgage, taxes, and yearly insurance premiums on the parties' marital residence, which Stowers quick-claimed to Bryant; (3) maintain health insurance for Bryant; and (4) maintain a life insurance policy for Bryant's benefit.

On June 25, 2007, the court entered a decree dissolving the parties' marriage. The decree specifically noted that the court had reviewed the parties' property settlement agreement and determined that it was "not unconscionable." Thereafter, the decree ordered that the property settlement agreement was to be incorporated by reference.

Approximately seven years later, on April 3, 2014, Stowers moved the family court to set aside the parties' agreement pursuant to KRS¹ 403.180. Stowers argued to the family court that the agreement had become unconscionable because Continental had experienced a dramatic decline in profitability. Stowers testified at a hearing before the family court that this decline was due in large part to Bryant's continuing meddling and interference.

The family court's order provides in relevant part:

The Settlement Agreement provided that the Petitioner [Stowers] would pay the Respondent [Bryant] the sum of \$4,500.00 per month for thirty years, plus 10% of the company's net profits, for her interest in CMS [Continental]. Since the dissolution in 2007, the Petitioner [Stowers] paid the Respondent [Bryant] for her share of this asset as agreed until 2012. Since 2012, the Petitioner [Stowers] has paid only a portion of the amounts owed to Respondent [Bryant] due to a serious decline in CMS [Continental] business.

¹ Kentucky Revised Statutes.

Other provisions of the Settlement Agreement require the Petitioner [Stowers] to obtain health insurance for the Respondent [Bryant] upon the expiration of the COBRA period, and to pay the mortgage and expenses related to the Respondent's [Bryant's] home, among other things. The Respondent [Bryant] filed a Motion to hold the Petitioner [Stowers] in contempt for his failure to comply with these provisions, but remanded the Motion upon the presentation of proof at the hearing.

The Agreement also provided that the Petitioner [Stowers] would pay the Respondent [Bryant] \$2,000.00 per month in maintenance, maintain a life insurance policy that would provide funds to pay off the Respondent's [Bryant's] mortgage, and pay for a boat in the Respondent [Bryant's] possession. The Petitioner [Stowers] has complied with these provisions.

...

The court found the Agreement at issue here not to have been unconscionable at the time of entry of the Decree, and the parties operated under the terms thereof for several years. The question before the court at this time is whether there has been a substantial and continuing change in circumstances since entry of the Decree that would render the Agreement to be unconscionable now. KRS 403.250.

...

The court finds, based upon [the] evidence, that the Petitioner [Stowers] has met the substantial burden of proof. It is manifestly unfair and inequitable to expect the Petitioner [Stowers] to continue to uphold his end of the Agreement when the Respondent [Bryant] has taken active steps to destroy the very source of income that framed the parties' expectations under the Agreement. As such, the court finds the agreement to now be unconscionable.

The terms of the Agreement that have not been fully completed required the Petitioner [Stowers] to pay

money to the Respondent [Bryant], or on the Respondent's [Bryant's] behalf. All other provisions have been complied with, i.e., transferring the real and personal property. At the time the Agreement was entered into, it was found not to be unconscionable based upon the success of CMS [Continental], the Petitioner [Stowers] is no longer in a financial position to continue to comply with the ongoing provisions of the Agreement, including maintenance, the payments of the Respondent's [Bryant's] mortgage, and payments stemming from her interest in CMS [Continental].

For the reasons stated above, the Petitioner's [Stowers'] motion is granted and the parties' Property Settlement Agreement filed on June 15, 2007 is set aside as unconscionable. The Respondent [Bryant] shall immediately transfer her interest in CMS [Continental] to Petitioner [Stowers], with no further payments due therefore. Maintenance is hereby terminated. The Respondent [Bryant] shall be responsible for all expenses, including, but not limited to, taxes and mortgage, for her residence. The Petitioner [Stowers] is no longer responsible for paying for the Respondent's [Bryant's] health insurance, or life insurance covering his life for the Respondent's [Bryant's] benefit. Other than as stated above, there shall be no future requirements under the Agreement for either party. All provisions of the Agreement that have already been complied with shall be retained by the receiving party.

The Respondent's [Bryant's] motions that were not specifically remanded are denied.

This appeal by Bryant followed.

II. Standard of Review

An appellate court reviews the family court's determinations regarding settlement agreements for an abuse of discretion. Also, in reviewing decisions of the family court, an appellate court cannot substitute its judgment for that of the

family court if there is substantial evidence supporting that court's decision. *Bickel v. Bickel*, 95 S.W.3d 925, 928 (Ky. App. 2002). Lastly, an appellate court may not set aside the family court's factual findings unless they are clearly erroneous.

III. Analysis

In *Woodson v. Woodson*, 338 S.W.3d 261, 263 (Ky. 2011), our Supreme Court held that "[a] maintenance award in a fixed amount to be paid out over a definite period of time is subject to modification under KRS 403.250(1)." *Id.* However, the *Woodson* Court also pointed to KRS 403.180(6), which provides that "[e]xcept for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms if the separation agreement so provides." KRS 403.180(6) permits the parties to a property settlement to "settle their affairs with a finality beyond the reach of the court's continuing equitable jurisdiction elsewhere provided." *Brown v. Brown*, 796 S.W.2d 5, 8 (Ky. 1990).

In this case, the parties did just that. Their property settlement agreement, which was incorporated by the family court in its final dissolution decree, provides:

16. MODIFICATION:

No future modifications, alteration or variation of the terms of this Agreement shall be binding or enforceable unless the same shall be in a writing signed by both parties.

The parties' non-modification provision is binding and precludes the family court from modifying the agreement. There was no written agreement

signed by the parties in this case. As such, the family court abused its discretion when it prematurely terminated the provisions the parties had previously agreed upon as part of their prior property settlement agreement for unconscionability.

We recognize that this conclusion may impose a great hardship on Stowers, and that “[t]he potential harm of a trial court not being able to modify a maintenance provision can lead to the financial ruination of a party.” *Woodson*, 338 S.W.3d at 263. Nevertheless, we are constrained to follow the clear language of KRS 403.180(6).²

Bryant’s last assertion is that the trial court abused its discretion when it denied her motion to hold Stowers’ in contempt as related to business and maintenance payments.

We have previously explained contempt as follows:

A trial court has inherent power to punish individuals for contempt, *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky. App. 2001), and nearly unfettered discretion in issuing contempt citations. *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986). We will reverse a finding of contempt only if the trial court abused its discretion in imposing the sentence. *Meyers v. Petrie*, 233 S.W.3d 212, 215 (Ky. App. 2007). Abuse of discretion is defined as conduct by a court that is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citing 5 Am.Jur.2d Appellate Review § 695 (1995)); *See also Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994).

² Additionally, we observe that Stowers might potentially have an avenue of relief pursuant to CR 60.02. However, it is clear from a review of the record that Stowers sought relief only by way of KRS 403.180. Likewise, the family court’s analysis centered entirely on KRS 403.180 and KRS 403.250. We decline to opine whether relief might have been proper under CR 60.02 where the family court has clearly not considered its applicability first.

Contempt is the “willful disobedience of—or open disrespect for—the rules or orders of a court.” *Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996). Contempt may be either civil or criminal, depending upon the reason for the contempt citation. *Id.* Civil contempt, the focus of this appeal, is “the failure ... to do something under order of court, generally for the benefit of a party litigant.” *Id.* Thus, courts have inherent power to impose a sanction for a civil contempt to enforce compliance with their lawful orders. *Blakeman v. Schneider*, 864 S.W.2d 903, 906 (Ky. 1993). While one may be sentenced to jail for civil contempt, it is said the contemptuous one carries the keys to the jail in her pocket, because she is entitled to immediate release upon her obedience to the court's order. *Campbell v. Schroering*, 763 S.W.2d 145, 148 (Ky. App. 1988). Whether civil or criminal, a party cannot be punished for contempt for her failure to perform an act which is impossible. *Blakeman*, 864 S.W.2d at 906. The inability to comply must be shown clearly and categorically by the defendant, and the defendant must prove he took all reasonable steps within her power to insure compliance with the court's order. *Id.*

Crowder v. Rearden, 296 S.W.3d 445, 450-51 (Ky. App. 2009).

It is clear to us from a review of the family court’s order that it determined that Stowers was unable to meet all his obligations under the parties’ agreement through no fault of his own. Likewise, it is clear that the family court determined that Bryant’s intermeddling in the affairs of Continental contributed to Stowers’ economic downturn. Based on these findings, we cannot conclude that family court abused its discretion when it declined to find Stowers in contempt.

See Campbell County v. Commonwealth, Kentucky Corrections Cabinet, 762 S.W.2d 6, 10 (Ky. 1988).

IV. Conclusion

For the reasons set forth above, we AFFIRM in part and REVERSE in part.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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