

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001256-ME

SONNY GENE PARTIN

APPELLANT

v.

APPEAL FROM BELL CIRCUIT COURT
HONORABLE ROBERT V. COSTANZO, JUDGE
ACTION NO. 01-CI-00197

DEBBIE KAY PARTIN (NOW POTTER)

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: JONES, MAZE, AND NICKELL, JUDGES.

MAZE, JUDGE: Sonny Partin appeals from a July 30, 2015 order of the Bell Circuit Court holding that his obligation to pay child support under a 2001 divorce decree must continue until his child turns twenty-one years of age. Partin contends that the trial court erroneously found the provision of the decree in question to be unambiguous and enforceable. More specifically, Partin argues that the ambiguity

in the child support clause should terminate his child support obligation due to his child's age.

For the reasons set forth herein, we agree with Partin that the language in dispute is ambiguous. Thus, we reverse and remand.

Factual Background and Procedural History

The facts of this case are not in dispute. The Appellant, Sonny Gene Partin (hereinafter "Partin") married the Appellee, Debbie Kay Partin (now and hereinafter "Potter") on April 24, 1993. One child was born of the marriage on February 21, 1997. On or about May 23, 2001, Potter filed a petition for dissolution of marriage, and the Bell Circuit Court entered a Decree of Dissolution of Marriage on July 12, 2001. Incorporated into this Decree was the Property Settlement, Child Custody, and Child Support Agreement (hereinafter "Settlement Agreement"). Both parties signed the Settlement Agreement on July 10, 2001.

The parties' dispute centers on the interpretation of the Settlement Agreement's provision addressing Partin's child support obligation. Specifically, Part II, subsection 3, entitled, "Custody and Visitation," addressed Partin's employment information and child support obligation. Concerning the latter provision, the Decree reads as follows: "[Partin] agrees to pay \$300.00¹ per month

¹ It is important to note that the record shows that in 2007, Partin provided proof to the court that his income had increased. As a result, on June 22, 2007, an Agreed Order for Increase was entered, increasing Partin's child support obligation to \$425.00, per month. However, upon

in child support and agrees to provide health insurance until the minor child is 21 years of age.”

On or about July 17, 2015, after the parties’ child reached the age of eighteen, Partin motioned the court to reopen and redocket the 2001 dissolution action and to clarify the terms of the Settlement Agreement. At a July 27, 2015 hearing, Partin and Potter, each with counsel, appeared and testified to their understanding of the terms of the Settlement Agreement at the time they signed it. After Partin testified to his understanding of the Settlement Agreement language, Potter explained that she understood the provision to obligate Partin to pay child support and provide personal health insurance until the child reached twenty-one years of age.

On July 30, 2015, the court issued an order finding that the terms of the Settlement Agreement were unambiguous and thus, Partin’s child support obligation would continue until the child reached the age of twenty-one. Partin now appeals from this order. Additional facts will be set forth below as necessary for our analysis.

review of this document, the order did not clarify the Settlement Agreement language in dispute and its impact on the provision will not influence this opinion.

Standard of Review

“The terms of a settlement agreement set forth in a decree of dissolution of marriage are enforceable as contract terms.” *Money v. Money*, 297 S.W.3d 69, 71 (quoting KRS^[2] 403.180(5)). “The construction and interpretation of a contract is a matter of law and is reviewed under the *de novo* standard.” *Id.* (quoting *Cinelli v. Ward*, 997 S.W.2d. 474, 476 (Ky.App. 1998)). Accordingly, we afford no deference to the trial court’s ruling on this matter.

Analysis

Before delving into the analysis of the issue before this Court, we must first note that Potter did not timely file a brief in this appeal. Under CR³ 76.12(8)(c),⁴ we may impose one of several sanctions on Potter for failure to file a brief. However, these sanctions are not appropriate in appeals involving child custody or support. *See Galloway v. Pruitt*, 469 S.W.2d 556, 557 (Ky. 1971). Thus, Potter’s failure to timely file a brief will not require sanctions, nor will it influence this Court’s opinion.

² Kentucky Revised Statutes.

³ Kentucky Rules of Civil Procedure.

⁴ In its entirety, CR 76.12(8)(c) reads:

If the appellee’s brief has not been filed within the time allowed, the court may: (i) accept the appellant’s statement of the facts and issues as correct; (ii) reverse the judgment if appellant’s brief reasonably appears to sustain such action; or (iii) regard the appellee’s failure as a confession of error and reverse the judgment without considering the merits of the case.

On appeal, Partin argues that the Settlement Agreement's regarding his child support obligation terms are ambiguous and therefore unenforceable. More specifically, Partin contends that the ambiguous language in the provision, when combined with evidence outside the four corners of the Settlement Agreement, operates to relieve him of his child support obligation now that the child has reached the age of majority.

The general principles of contract law dictate that we first determine whether the provision in question is ambiguous. *See Central Bank & Trust Co. v. Kincaid*, 617 S.W.2d 32 (Ky. 1981). Our Supreme Court has held that a contract is ambiguous "if a reasonable person would find it susceptible to different or inconsistent interpretations." *Hazard Coal Corp. v. Knight*, 325 S.W.3d 290, 298 (Ky. 2010). Furthermore,

[i]n determining whether ambiguity exists, we must look no further than the four corners of the instrument. If we find ambiguity, then extrinsic evidence may be considered in order to determine the intent of the parties. When there is no ambiguity, resort to parol evidence is prohibited.

Central Bank & Trust Co., 617 S.W.2d at 33.

Upon review of the language in the Settlement Agreement in its entirety, we hold that the provision in question is ambiguous. Specifically, the language "until the minor is 21 years of age" may reasonably be interpreted to apply only to Partin's obligation "to provide health insurance." It is just as

reasonable to conclude, as the trial court concluded, that the “until” language may apply to Partin’s obligation to provide health insurance as well as his agreement “to pay \$300.00 per month in child support.” What is key is that both interpretations are reasonable; and therefore, the provision is ambiguous. As such, a court “may consider parol and extrinsic evidence involving the circumstances surrounding execution of the contract, the subject matter of the contract, the objects to be accomplished, and the conduct of the parties.” *Cantrell Supply Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

“[O]nce a court determines that a contract is ambiguous, areas of dispute concerning the extrinsic evidence are factual issues and construction of the contract become subject to resolution by the fact finder.” *Cantrell Supply Inc.*, 94 S.W.3d at 385; *see Cook United, Inc. v. Waits*, 512 S.W.2d 493, 495 (Ky. 1974); *Reynolds Metals Co. v. Barker*, 256 S.W.2d 17, 18 (Ky. 1953). However, this Court is not a fact-finder. As the trial court’s decision did not progress beyond the question of ambiguity and on to facts and testimony outside the four corners of the Settlement Agreement, we will not be the first to rule upon even those facts to which the parties have already testified.

Rather, we remand this case to the trial court, which should feel free to conduct further hearings, if necessary, and to gather and consider additional evidence it or the parties believe to be probative of the issue of enforceability of

the child support provision of the Settlement Agreement. Such consideration should include, but may not be limited to, whether the provisions of KRS 403.213(3)⁵ concerning emancipation control in this case, or whether, even in light of the Settlement Agreement's aforementioned ambiguity, the parties "agreed in writing or expressly provided" otherwise.

Conclusion

Accordingly, the order of the Bell Circuit Court is reversed and the matter is remanded for further consideration of the enforceability of the child support provision in the Settlement Agreement.

ALL CONCUR.

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

Melissa R. Dixon
Pineville, Kentucky

⁵ The statute provides,

Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18). In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years.