RENDERED: AUGUST 17, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000823-MR

SARAH KING — APPELLANT

v.

APPEAL FROM LAWRENCE FAMILY COURT
HONORABLE JANIE MCKENZIE-WELLS, JUDGE
ACTION NO. 14-CI-00274

JOHNNY KING — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND NICKELL, JUDGES.

CLAYTON, CHIEF JUDGE: Sarah King appeals from the Lawrence Family Court's order of December 20, 2016, and its findings of fact, conclusions of law and order and judgment of April 18, 2017, in this dissolution of marriage action. Sarah argues that the trial court erred (1) in finding an antenuptial agreement she

entered into with her former husband, Johnny King, was valid and enforceable and (2) in its characterization and division of the marital property.

Sarah and Johnny King were married on October 28, 2011. Earlier the same day, they signed an antenuptial agreement prepared by Johnny's attorney. It stated that the parties entered the agreement with full disclosure and knowledge of the extent and approximate value of each other's property and provided they would separately retain all rights in their respective property during the course of the marriage and in the event of a dissolution. The parties also waived any spousal support and any share in each other's retirement benefits. The agreement was subsequently recorded in the Lawrence County Clerk's office.

Approximately three years later, Sarah filed a petition for dissolution of marriage. In the litigation which followed the filing of the petition, Sarah challenged the validity and enforceability of the antenuptial agreement. Following a hearing on June 13, 2016, the family court found the agreement to be valid and entered an order to that effect on August 5, 2016. On December 20, 2016, it entered an order which, in addition to addressing arguments regarding the disposition of a box truck, denied Sarah's motion to make the August 5, 2016, order final and appealable.

On April 18, 2017, the family court entered its findings of fact, conclusions of law, and order and judgment. This appeal by Sarah followed.

Sarah argues that the family court erred in finding the antenuptial agreement to be valid and enforceable. Johnny contends that this argument is barred because Sarah did not appeal from the August 5, 2016, findings of fact and conclusions of law upholding the antenuptial agreement.

The August 5, 2016, order upholding the antenuptial agreement was not final and appealable. As we have related, after Sarah moved the court to make the order final and appealable, the family court heard arguments on the issue and then denied the motion. Consequently, the August 5, 2016, order remained interlocutory and unappealable.

The findings of fact, conclusions of law, order and judgment of April 18, 2017, which Sarah did designate in her notice of appeal, stated that the antenuptial agreement had been determined to be valid and enforceable, and proceeded on that premise. Sarah's appeal from this final judgment was sufficient to confer appellate jurisdiction over the issue of the antenuptial agreement's validity. "It is well settled . . . that one can only appeal from a final judgment and that all interlocutory orders or judgments are 'readjudicated finally' upon entry of a final judgment disposing of all issues making it unnecessary to name any judgment in the notice of appeal other than the final one." *Blair v. City of Winchester*, 743 S.W.2d 28, 31 (Ky. App. 1987) (internal citation omitted). The April 18, 2017, judgment readjudicated finally all prior interlocutory orders or judgments. "When

the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are not specifically disposed of in such final judgment." Kentucky Rules of Civil Procedure (CR) 54.02(2).

Sarah contends the antenuptial agreement was unconscionable because she was never adequately informed of Johnny's financial assets prior to executing the agreement and was not informed by the attorney who prepared the agreement of its legal ramifications. Sarah does not provide any references to the record, which consists of seven volumes, in making these arguments. She does allude to testimony presented at the June 13, 2016, hearing on the matter, but the recording of that hearing was not designated by Sarah as part of the record on appeal. The appellant is required to file a designation of untranscribed material. CR 75.01(1). "The designation shall: (1) list such untranscribed portions of the proceedings stenographically or electronically recorded as appellant wishes to be included in the record on appeal." *Id*. The appellant bears the burden of presenting a complete record to support her appeal. *Ray v. Ashland Oil, Inc.*, 389 S.W.3d 140, 145 (Ky. App. 2012) (citing *Hatfield v. Commonwealth*, 250 S.W.3d 590 (Ky. 2008)). "Matters not disclosed by the record cannot be considered on appeal." *Montgomery v. Koch*, 251 S.W.2d 235, 237 (Ky. 1952).

Not only is the record before us incomplete, we are provided with no citations to that portion of the record we do have before us. A brief is required to contain "An 'ARGUMENT' . . . with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." CR 76.12(4)(c)(v).

Sarah argues she was not fully informed of Johnny's financial situation at the time the agreement was signed, that it was prepared by Johnny's attorney at Johnny's behest, that she signed the agreement mere hours before the wedding on the day their marriage license was set to expire, and she was not advised that she should seek outside counsel. The family court found that the attorney who prepared the antenuptial agreement reviewed and discussed every paragraph with Sarah and Johnny present and also discussed the assets owned by the parties. The family court described Sarah as "clearly an articulate woman" who is "able to understand the value of assets." The court also found that the parties had lived together for approximately one year before their marriage on October 28, 2011, and that beginning at least in February 2011, Sarah started taking care of the majority of Johnny's finances, including paying bills, writing checks, taking care of his checking account, and organizing all financial

documents, including Johnny's retirement information, in binders. In the summer preceding their marriage, Sarah and Johnny had discussions with Sarah's father regarding Johnny's assets, retirement and pension plans, and Sarah and Johnny's plan to use their assets to retire within ten years.

Sarah has not drawn our attention to any evidence in the record that would cast doubt on these findings of the court. "[I]t is not our responsibility to search the record to find where it may provide support for [Sarah's] contentions." *Smith v. Smith*, 235 S.W.3d 1, 5 (Ky. App. 2006), *as modified* (Feb. 10, 2006). "It has long been held that, when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985). Therefore, we affirm the family court's finding that the antenuptial agreement was valid and enforceable.

Next, Sarah argues that the family court's division of the marital estate was erroneous, unsupported and inequitable.

When disposing of property in a dissolution of marriage action, the trial court is required by Kentucky Revised Statutes (KRS) 403.190 to follow a three-step process: "(1) the trial court first characterizes each item of property as marital or nonmarital; (2) the trial court then assigns each party's nonmarital property to that party; and (3) finally, the trial court equitably divides the marital

property between the parties." *Travis v. Travis*, 59 S.W.3d 904, 908-09 (Ky. 2001) (citations and footnotes omitted). On appeal, we review the trial court's findings of fact only to determine if they are clearly erroneous. CR 52.01. A factual finding is not clearly erroneous if it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). The trial court's division of the marital property will not be disturbed except for an abuse of discretion. *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001).

> A family court operating as finder of fact has extremely broad discretion with respect to testimony presented, and may choose to believe or disbelieve any part of it. A family court is entitled to make its own decisions regarding the demeanor and truthfulness of witnesses, and a reviewing court is not permitted to substitute its judgment for that of the family court, unless its findings are clearly erroneous.

Bailey v. Bailey, 231 S.W.3d 793, 796 (Ky. App. 2007).

In this case, the trial court listed the numerous tracts of real property owned by the parties and excluded those properties covered by the antenuptial agreement from the marital property. The remaining assets included a timeshare and several vehicles, as well as debts consisting of unpaid taxes and purchases from iTunes in the amount of $21,665.

Sarah contends that Johnny did not present any evidence, other than his own testimony, to adequately trace the sources of his nonmarital property. She does not specify the nonmarital property at issue nor does she provide references to

the record to indicate the subject of her argument. Because the family court had already determined that antenuptial agreement was valid and enforceable, it did not err in designating as nonmarital those properties excluded by the agreement. Sarah nonetheless argues that the proper course for the family court should have been to order the sale of all real and personal property owned by the parties and divide the proceeds equitably between them. Sarah provides no legal or factual support for this argument.

Similarly, Sarah disputes the family court's finding that she is responsible for one-half of an iTunes expenditure which accrued from July 1, 2014, through October 8, 2014. She contends that the analysis underlying the finding is inadequate in that it relies solely on Johnny's testimony. She claims "everyone agreed" Johnny's children were responsible for making unauthorized purchases. We are unable to review the evidentiary basis for her claim because the hearing is not in the record and we are not provided with any references to the portion of the record we do have. Under these circumstances, as with Sarah's previous argument, we affirm the family court's decision.

For the foregoing reasons, the family court's findings of fact, conclusions of law and order and judgment is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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Anthony Gadlage
Louisville, Kentucky

BRIEF FOR APPELLEE:

Jeffrey D. Hensley
Russell, Kentucky