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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000067-MR

BARBARA JEAN REID APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DAWN M. GENTRY, JUDGE
ACTION NO. 14-CI-01292

RICHARD SPENCE REID APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, KRAMER, AND J. LAMBERT, JUDGES.

DIXON, JUDGE: Barbara Jean Reid appeals an order of the Kenton Circuit Court that amended its final judgment to correct a clerical error in the parties' property settlement agreement. We affirm.

Barbara and Richard Spence Reid were divorced on February 29, 2016, and a property settlement agreement was incorporated into the decree of

dissolution. The settlement agreement provided Richard would pay Barbara maintenance as follows:

> Effective upon the entry of the Decree of Dissolution, the Husband shall pay directly to the Wife the monthly sum of $1,250.00 for one hundred and two months or ten (10) years.

On August 2, 2017, Richard filed a motion to clarify and correct the property settlement agreement, alleging the "or ten (10) years" language in the maintenance provision was a clerical error. The court held an evidentiary hearing on the motion and heard testimony from the parties.[1] The court rendered findings of fact and conclusions of law, which stated, in part:

> 3. [Richard] testified that the parties and their respective Counsel had mediation on November 11, 2015 whereby issues of property division, debt division, and spousal maintenance were resolved.
>
> 4. [Richard] stated he knew that the spousal maintenance was agreed upon to be one thousand two hundred and fifty dollars (1,250.00) for a period of 102 months. He began paying spousal support upon the entry of the Decree of Dissolution of Marriage. It was not until he was seeking a new mortgage that it was brought to his attention that the Property Settlement Agreement had a clerical error in it on page 7, Article VIII stating "*the Husband shall pay directly to the Wife the monthly sum*

[1] We are unable to review the videotaped evidentiary hearing, as Barbara failed to designate that hearing for inclusion in the record on appeal. It is the Appellant's duty to ensure that the record on appeal is "sufficient to enable the court to pass on the alleged errors." *Burberry v. Bridges*, 427 S.W.2d 583, 585 (Ky. 1968). Since the record is incomplete, "we may indulge the presumption of correctness of the judgment upon review." *Commonwealth, Dep't of Highways v. Richardson*, 424 S.W.2d 601, 604 (Ky. 1967).

> *of $1,250.00 for one hundred and two months or ten years*."
>
> 5. [Richard] testified that he had reviewed with his legal counsel a screen shot of the mediation board that indicated spousal maintenance of $1,250.00 x 102 and he requested a correction of the Property Settlement Agreement due to the error.
>
> 6. [Richard] testified that during mediation he knew that [Barbara] was requesting ten (10) years of spousal maintenance but he wanted five (5) or six (6) years of spousal maintenance and a compromise was reached at one hundred and two months.
>
> 7. [Barbara] testified that she did want ten (10) years of spousal maintenance but could not remember if a compromise was reached.

In its order, the court concluded the phrase "or ten (10) years" in the maintenance provision was a clerical error and, pursuant to CR 60.01, struck that language from the parties' settlement agreement. The court subsequently denied Barbara's motion to alter, amend, or vacate its decision, and this appeal followed.

Barbara argues the inconsistent language in the agreement was drafted by Richard's counsel and constituted a mistake, which he realized after the one-year time limit expired to file a motion pursuant to CR 60.02(a). Accordingly, Barbara contends the court erroneously found the "or ten (10) years" language to be a clerical error correctable under CR 60.01.

CR 60.01 states, in part:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

A clerical error or mistake is "made by a clerk or other judicial or ministerial officer in writing or keeping records." *Cardwell v. Commonwealth*, 12 S.W.3d 672, 674 (Ky. 2000). In other words, "it is an error resulting from a minor mistake or inadvertence, esp. [sic] in writing or copying something on the record, and not from judicial reasoning or determination." *Rogers v. Commonwealth*, 366 S.W.3d 446, 452 (Ky. 2012) (citation and internal quotations omitted).

Here, the court held an evidentiary hearing and considered the testimony offered by the parties. We are mindful the trial court was in the best position to weigh the evidence and assess witness credibility. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Richard tendered photographs of the dry-erase board showing calculations and formulas used to determine maintenance during the parties' mediation. Richard also explained the parties ultimately compromised on a maintenance term of 8 ½ years. In turn, Barbara testified she requested a ten-year term of maintenance and was unable to remember if they reached a compromise during mediation.

Based on our review of the limited record before us, we find no error in the trial court's determination that the phrase "or ten (10) years" in the

maintenance provision of the settlement agreement was a clerical error; accordingly, the court was vested with authority to correct the error pursuant to CR 60.01.

For the reasons stated herein, the judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Darrell A. Cox
Covington, Kentucky

BRIEF FOR APPELLEE:

Margo L. Grubbs
Covington, Kentucky