

RENDERED: AUGUST 30, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001447-MR

ANDREW MICHAEL FUGEMAN, JR.

APPELLANT

APPEAL FROM GREENUP CIRCUIT COURT  
FAMILY DIVISION  
v. HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 18-CI-00275

HEATHER RENEE FUGEMAN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GOODWINE, NICKELL, AND SPALDING, JUDGES.

GOODWINE, JUDGE: Andrew Michael Fugeman, Jr. (“Andrew”) appeals from a Greenup Circuit Court, Family Division, order denying his motion to set aside a settlement agreement entered into with Heather Renee Fugeman (“Heather”). Andrew alleged that the agreement was unconscionable and was signed under duress. After careful review of the record, finding no error, we affirm.

Andrew and Heather were married on November 21, 2008, in Boyd County. Heather filed a petition for dissolution of marriage in the Greenup Circuit Court, Family Division, on May 14, 2018. That same day, she filed her deposition and the parties' settlement agreement. It provided for the disposition of the assets and debts accumulated during their marriage. Andrew signed the settlement agreement a few days earlier in the presence of two witnesses, after asking questions and making comments regarding the division of property.

A week after signing the settlement agreement, Andrew, through counsel, filed a motion to set aside the settlement agreement, arguing it was unconscionable. Heather responded, arguing Andrew waited to review the agreement with an attorney until after he signed it, and that the agreement was not unconscionable. The trial court conducted a hearing on August 14, 2018, and took the matter under advisement. On August 21, 2018, the trial court entered an order finding the agreement was conscionable.

On August 29, 2018, the trial court entered findings of fact, conclusions of law, and a decree of dissolution of marriage, which incorporated the settlement agreement and again found it to be conscionable. Andrew thereafter moved to alter, amend, or vacate the August 21, 2018 order for specific findings of fact. The trial court denied the motion by order entered August 29, 2018. This appeal followed.

“The family court is in the best position to weigh the evidence and determine if a separation agreement is unconscionable or if it resulted from duress, undue influence, or overreaching.” *Mays v. Mays*, 541 S.W.3d 516, 524 (Ky. App. 2018) (citing *Shraberg v. Shraberg*, 939 S.W.2d 330, 333 (Ky. 1997)). We defer to the circuit court’s broad discretion regarding such determinations. As such, we review for abuse of discretion. “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000) (citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)).

At the outset, we must address the deficiencies of Andrew’s brief. CR<sup>1</sup> 76.12(4)(c)(v) requires an appellant’s argument contain “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[.]” Andrew failed to cite pertinent legal authority for two of his three arguments. He also failed to include a statement of preservation for any of his arguments. Additionally, CR 76.12(4)(c)(vii) provides that the “appellant shall place the judgment, opinion, or order under review immediately after the appendix list so that it is most readily available to the court.” Andrew placed the judgment third in his appendix.

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<sup>1</sup> Kentucky Rules of Civil Procedure.

Andrew's failure to comply with CR 76.12 hinders our ability to review his arguments. *See Hallis v. Hallis*, 328 S.W.3d 694, 695-97 (Ky. App. 2010). "Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only[.]" *Hallis*, 328 S.W.3d at 696 (citation omitted). Because Andrew's first argument fails on the merits and his remaining arguments are made without supporting legal authority and deemed waived, we elect to ignore the deficiencies in Andrew's brief and proceed with our review.

On appeal, Andrew argues the trial court abused its discretion in (1) finding the settlement agreement was conscionable; (2) failing to make findings of fact regarding the parties' economic circumstances under KRS<sup>2</sup> 403.180(2); and (3) failing to find the separation agreement was signed under undue influence or duress. First, Andrew argues the trial court abused its discretion in failing to find the settlement agreement unconscionable. He argues the settlement agreement was unconscionable because the marital home, the main asset he received, was worth less than he believed it was worth at the time he signed the settlement agreement. Because Andrew contends that the value of the home is lower than he anticipated, he argues that the value of property Heather received under the settlement

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<sup>2</sup> Kentucky Revised Statutes.

agreement far exceeds the value he received because Heather received the full value of her retirement account.

KRS 403.180(1) encourages “amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage” by allowing them to “enter into a written separation agreement containing provisions for . . . disposition of any property owned by either of them[.]” KRS 403.180(2) provides that such settlement agreements “are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.”

The Supreme Court of Kentucky has held that “a separation agreement is unconscionable and must be set aside if the court determines that it is manifestly unfair and unreasonable.” *Shraberg*, 939 S.W.2d at 333 (quoting *McGowan v. McGowan*, 663 S.W.2d 219, 222 (Ky. App. 1983)). The “party challenging the agreement as unconscionable” bears a “definite and substantial burden” of proof. *Peterson v. Peterson*, 583 S.W.2d 707, 711 (Ky. App. 1979) (quoting *McKenzie v. McKenzie*, 502 S.W.2d 657 (Ky. 1973)). Upon “considering the economic circumstances of the parties and any other relevant evidence[.]” the trial court determines whether the complaining spouse proved that the settlement

agreement was fundamentally unfair. *Shraberg*, 939 S.W.2d at 333 (quoting KRS 403.180(2)). “[T]he trial court is in the best position to make such an analysis and the cases reflect broad deference to the trial court in this regard.” *Id.*

Here, the trial court’s order provides that Andrew “testified that he read and understood the settlement agreement,” and Andrew asked questions of Heather and the two witnesses regarding the division of property in the settlement agreement. The order further indicates the trial court considered testimony that Andrew “had physically assaulted” Heather within the last two years, and “she agreed not to sue him for the assault if he signed the agreement.” The order discusses that the home was listed for \$112,000.00, but Andrew’s expert testified that the appraisal value was \$85,000.00. The order also mentions Heather’s testimony regarding the condition of the home, which indicates that the trial court weighed her testimony against the appraisal value provided by Andrew’s expert. Furthermore, the order provides that Andrew was aware the value of the marital portion of Heather’s retirement account was approximately \$60,000.00. The trial court further found “that the parties entered into the settlement agreement, knowing they were informed of the assets belonging to the parties and any and all debts that may exist. Based on the evidence presented, the trial court concluded that the agreement was not unconscionable.

Other than Andrew's assertion that the appraisal value of the marital home is less than he hoped and that he knowingly contracted away his right to his share of Heather's retirement account, he offers little in support of his argument. He cites no specific values of the motor vehicles, personal effects, or bank accounts divided pursuant to the settlement agreement. Without these values, we cannot make an accurate assessment of whether the value received by each party was uneven. Even then, "a bad bargain and unconscionability [are] not synonymous." *Shraberg*, 939 S.W.2d at 333. In short, we do not have enough information regarding the value of the property received by each party to meaningfully review Andrew's argument. The trial court determined that the settlement agreement was conscionable, and based upon the record before us, we have no basis to overturn its decision.

We address Andrew's second and third arguments in tandem. He argues the trial court abused its discretion in refusing to make specific findings of fact regarding the parties' economic circumstances pursuant to KRS 403.180(2). He also argues that he signed the settlement agreement under duress or undue influence because he was surprised when he was presented with the settlement agreement. Andrew failed to cite any legal authority in support of these arguments. "Our courts have established that an alleged error may be deemed waived where an appellant fails to cite any authority in support of the issues and

arguments advanced on appeal.” *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005) (citation omitted). We will not “research and construct a party’s legal arguments[.]” *Id.*; *Prescott v. Commonwealth*, 572 S.W.3d 913, 923 (Ky. App. 2019). Therefore, we deem Andrew’s remaining arguments waived and decline to address them.

For the foregoing reasons, we affirm the judgment of the Greenup Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jeffrey D. Hensley  
Russell, Kentucky

BRIEF FOR APPELLEE:

R. Stephen McGinnis  
Greenup, Kentucky