

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001829-MR

JAMES STEWART LEFFLER

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE RICHARD J. FITZGERALD, JUDGE  
ACTION NO. 96-FC-006155

CHARLOTTE ANN LEFFLER

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: DYCHE, JOHNSON, AND KNOPF, JUDGES.

DYCHE, JUDGE: James and Charlotte Leffler were married in 1980. It was the second marriage for both of them. Charlotte filed a petition for legal separation in 1996 after she learned that James had been sexually abusing their adopted daughter.

Charlotte employed counsel, and a separation agreement was drafted. James was not represented by an attorney. Charlotte's counsel sent James a copy of the agreement several days before he met with her and Charlotte in October of 1996. The agreement was signed and later incorporated into the decree of legal separation entered in March 1997.

James later sought early retirement from Ford Motor Company because he was facing long term incarceration for his criminal behavior with the adopted daughter. It was then that he hired a lawyer and petitioned for a decree of dissolution (in lieu of legal separation) as well as moved to have the separation agreement set aside as unconscionable.

Two hearings were held. After the first hearing, the Jefferson Family Court granted James's petition for dissolution of marriage. It also entered a Qualified Domestic Relations Order (QDRO) regarding James's pension from Ford Motor Company. The QDRO was amended to reflect that the equal division of the Ford pension (per the separation agreement) was limited to the duration of the marriage (i. e., December 12, 1980, to March 13, 1997). After the second hearing, the family court entered an order denying James's motion to set aside the separation agreement. James appeals.

Kentucky Revised Statute 403.180(2) provides:

In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the custody, support, and visitation of children, 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.

"Unconscionable" is defined as "manifestly unfair or inequitable." Shraberg v. Shraberg, Ky., 939 S.W.2d 330, 333 (1997) (citation omitted). "The opponent of the agreement has the burden of proving the agreement is invalid or should be

modified." Blue v. Blue, Ky. App., 60 S.W.3d 585, 589 (2001)  
(footnote omitted).

The Jefferson Family Court found James failing in his burden of proof, and we agree. The order contained the following language:

While there is no question, both of the parties were emotionally upset and distressed by the actual circumstance leading to the separation, stress incident to the disclosure of sexual abuse and potential criminal hearings is not sufficient basis to set aside a Property Settlement Agreement on the grounds of unconscionability. There is no indication of false representation of value, fraud or deceit . . . . The Court does not find that the agreement was manifestly unfair or unreasonable.

We have reviewed the record in its entirety, including the videotape of both hearings, and cannot arrive at a contrary conclusion, especially giving "deference to the view of the trial court." Shraberg, supra at 333 (citation omitted). James Leffler was given over three months between the time he received the agreement and the taking of proof before the commissioner in February 1997. Although James was not represented by counsel at the proof hearing, he admitted at a later hearing that he had in fact contacted an attorney and discussed the matter with her. The separation agreement is not unfair on its face, nor is the amended QDRO evidence that the trial court considered unfair that portion of the agreement concerning James's pension. The family court's order reflects that its decision was based on all relevant proof in light of statutory and case law regarding property settlements.

The judgment of the Jefferson Family Court is affirmed.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

KNOPF, JUDGE, CONCURS IN RESULT AND FURNISHES A SEPARATE OPINION.

KNOPF, JUDGE, CONCURRING. Traditionally, an unconscionable bargain has been said to be one that no person in his or her right mind would make, on the one hand, and that no fair and honest person would accept, on the other. Because frequently the parties to a pending divorce are neither in their best minds nor disposed to be fair, courts have been willing to scrutinize their agreements and to afford them a measure of protection from their own irresponsibility. James Leffler contends that he was not in his right mind and without counsel when he agreed to give his soon to be ex-wife more than two thirds of their marital estate plus maintenance of \$1,500.00 per month for nearly ten years, despite the fact that his job and hence his income were soon to terminate. He is now in the penitentiary. Although acknowledging that James's abuse of his adopted daughter, the coming to light of which had precipitated the agreement, was a crisis for all the people concerned, the trial court concluded that James's agreement was not unconscionable. The result, I believe, could easily have gone the other way. This agreement is extremely one-sided and was executed when neither party was likely to appreciate its consequences. Because I am unwilling to say, however, that the agreement was fundamentally unfair as a matter of law, I am obliged to agree with the majority that the trial court did not abuse its broad discretion. I concur therefore, but only in the result.

BRIEF AND ORAL ARGUMENT  
FOR APPELLANT:

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BRIEF AND ORAL ARGUMENT  
FOR APPELLEE:

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