RENDERED: JULY 26, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0300-MR

GEORGE TIMOTHY GRAY — APPELLANT

v.

APPEAL FROM SCOTT FAMILY COURT
HONORABLE WILLIAM J. FOOKS, JUDGE
ACTION NO. 22-CI-00530

AMANDA JEAN GRAY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, LAMBERT, AND TAYLOR, JUDGES.

LAMBERT, JUDGE: George Timothy Gray appeals the portion of the Scott Family Court's Decree of Dissolution, entered September 28, 2022, adopting the parties' property settlement agreement. After careful review of the briefs, record, and law, we affirm.

BACKGROUND FACTS AND PROCEDURAL HISTORY

The parties were married in April 2018, and no children were born of the union. Anticipating the dissolution of their marriage, the parties attended

mediation on August 19, 2022, and ultimately entered into a signed settlement agreement purporting to resolve their property, tax, and debt disputes. Shortly thereafter, Amanda filed a petition for dissolution, her deposition upon written questions, and an entry of appearance and waiver of service signed by George. Additionally, Amanda tendered an agreed order of submission for a judgment upon written deposition, a proposed decree of dissolution, and the settlement agreement, all of which were signed by both parties. Later, at the court's direction, she supplemented her filings with proposed findings of fact and conclusions of law.

On September 28, 2022, the court adopted the proposed findings of facts and conclusions of law as well as the decree of dissolution which incorporated by reference the parties' settlement agreement. George subsequently filed motions to vacate the judgment, arguing that Final Verified Disclosure Statements had not been filed, in violation of Family Court Rules of Practice and Procedure (FCRPP) 2, and that the court had not complied with Kentucky Revised Statutes (KRS) 403.180 prior to adopting the settlement agreement. His motions were denied by the court's March 1, 2023, order, and this appeal timely followed.

STANDARD OF REVIEW

KRS 403.180 provides:

> (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions

> for maintenance of either of them, disposition of any property owned by either of them, and custody, support and visitation of their children.
>
> (2) 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.
>
> (3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, support, and maintenance.
>
> (4) If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:
>
> > (a) Unless the separation agreement provides to the contrary, its terms shall be set forth verbatim or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or
> >
> > (b) If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

The effect of the statute is to "establish[] a measure of protection for parties from their own irresponsible agreements." *Shraberg v. Shraberg*, 939 S.W.2d 330, 333 (Ky. 1997). Ordinarily, we review a court's determination of whether a settlement agreement is unconscionable for an abuse of discretion. *Mays*

v. Mays, 541 S.W.3d 516, 524 (Ky. App. 2018). However, as George's claims involve only questions of law and the court's application of the statute and the attendant FCRPPs, our review is *de novo*. *See Seeger v. Lanham*, 542 S.W.3d 286, 290 (Ky. 2018); *Keeney v. Keeney*, 223 S.W.3d 843, 848-49 (Ky. App. 2007).

LEGAL ANALYSIS

George's first claim on appeal is that the court erred as a matter of law when it incorporated the parties' settlement agreement into the decree without first requiring that they comply with FCRPP 2(1)(e) and file their Final Verified Disclosure Statements. He further argues in his reply brief that the court also violated FCRPP 3(1)(a), which requires that parties seeking a judgment without a trial comply with any filing requirements imposed by local rules, since no disclosures were filed in contravention of Scott County's local rules.[1]

As to the first argument, FCRPP 2 merely sets out general filing requirements for dissolution cases, such as that pleadings must be signed by the preparer and filed with the clerk, and identifies the pleadings that, "if applicable, shall" be filed. George is correct that the Final Verified Disclosure Statement is one of the listed documents. However, FCRPP 2 does not resolve the question of

[1] The 14th Judicial Circuit Family Court Rules of Practice and Procedure 707C (effective March 30, 2012) provides that parties seeking a decree via deposition upon written questions shall submit "both parties' Form AOC-238 Preliminary Verified Disclosure Statement," and further states that the "[p]arties may not waive by agreement submission" of these disclosure statements.

whether the Final Verified Disclosure Statement is applicable to the case at hand, and, thus, the rule does not mandate its submission. Accordingly, we disagree that FCRPP 2(1)(e) required that the Final Verified Disclosure Statement be filed in this matter.

As for whether the court violated FCRPP 3(1)(a), "[i]t has long been this Court's view that specific grounds not raised before the trial court, but raised for the first time on appeal will not support a favorable ruling on appeal." *Fischer v. Fischer*, 348 S.W.3d 582, 588 (Ky. 2011), *abrogated on other grounds by Nami Res. Co., LLC v. Asher Land & Mineral, Ltd.*, 554 S.W.3d 323 (Ky. 2018). Because George did not raise this issue before the family court, we do not reach the merits of the claim.

Next, we address George's assertion that the court erred as a matter of law when it "approved" and incorporated the parties' settlement agreement without first making a specific finding that it was "not unconscionable." We need not reach George's exact argument that "approved" cannot be used in lieu of "not unconscionable," because, in addition to approving the agreement in the decree, the court made the following relevant findings of fact:

> 11. Is there a written Agreement: Yes
>
> Is the Agreement unconscionable: No

Although the court's finding regarding unconscionability is not phrased exactly as George states is necessary, we perceive that no harm has resulted from the minor variance of language and that reversing the order to remedy the discrepancy would serve no other purpose than to elevate form over substance. *See* Kentucky Rules of Civil Procedure (CR) 61.01 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). We therefore conclude that the court did not commit reversible error when it adopted the parties' settlement agreement without using the exact phrase "not unconscionable."

Finally, George contends that the court erred as a matter of law when it incorporated the parties' settlement agreement into their decree of dissolution without conducting a KRS 403.180(2) conscionability review. His claim on this score appears to be two-fold. He argues that the review could not have occurred, first, because a hearing, which he concedes that the parties need not attend, did not occur and, second, because the court did not have the benefit of the parties' financial disclosures. We will address each contention in turn.

Supporting his claim that a hearing is required, George refers this Court to the plain language of KRS 403.180, various appellate court holdings reiterating that settlement agreements must be reviewed prior to the family court

incorporating their terms into a decree of dissolution,[2] and FCRPP 2(1)(f), which he maintains "allows for the waiver of notice of the hearing" to be filed. George argues that these authorities "support[] the conclusion that, [] while parties may waive notice of when the Family Court will conduct its KRS 403.180(2) conscionability review, the review itself is not waivable."

Although we agree that the court's review of settlement agreements cannot be waived by the parties, we disagree that the review must be conducted by way of a hearing. Beyond the futility of a hearing where no party is present to offer evidence or argument, KRS 403.180 merely requires that the court consider the conscionability of the proposed agreement. Neither the statute nor the cases cited by George dictate that a hearing must be held. Furthermore, we are unpersuaded that FCRPP 2(1)(f) has any bearing on the issue. This rule merely states that "[a]ll original pleadings, including forms, in a dissolution action shall be signed by the preparer, filed with the clerk of the court, and if applicable, shall include, unless otherwise ordered by the court, . . . [a] verified waiver of notice of final hearing[.]" The rule, which speaks solely to the general expectations regarding filings in a dissolution action, has no specific relevance to KRS 403.180, and, ergo, it offers no guidance as to how a court is to comply with its statutory

[2] Specifically, George cites to *Mays v. Mays*, 541 S.W.3d 516, 523 (Ky. App. 2018); *Money v. Money*, 297 S.W.3d 69 (Ky. App. 2009); and *Peterson v. Peterson*, 583 S.W.2d 707, 711 (Ky. App. 1979).

obligations thereunder. Consequently, the court did not err by reviewing the settlement agreement without conducting a hearing.

Regarding the fact that verified financial disclosures were not filed, we disagree with George that this precluded the court from fulfilling its statutory obligation of review. KRS 403.180(2) does state that the terms of a settlement agreement pertaining to the disposition of property "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." (Emphasis added.) However, the statute does not instruct that any specific proof of the parties' economic circumstances, such as the verified financial disclosure form, is required to be filed by the parties or considered by the court during its review.[3]

Indeed, as far as this Court can discern, prior to the institution of the FCRPP in 2010,[4] there was no statewide requirement for filing financial

[3] We note that, likewise, the FCRPP do not directly require that verified financial disclosures be filed when, as here, the parties seek a decree without a final hearing. *See* FCRPP 2(3) (instructing that preliminary disclosures should not be filed "unless ordered by the court or required by local rule") and FCRPP 3 (which provides that final disclosures are to be filed within a certain time before a trial, but when an agreement has been reached on all claims and no trial is sought, all that is required is the "filing [of] a motion or agreed order to submit the case for final disposition."). However, because FCRPP 3(1)(a) instructs that parties must comply with the applicable local rules, the rules may indirectly prescribe the filing of the disclosures.

[4] Supreme Court of Kentucky Administrative Order No. 2010-09.

disclosures in even contested dissolution hearings. As KRS 403.180, which became effective in 1972, long predates the FCRPP, logic dictates that the disclosures are not essential to the court's compliance with its statutory obligation.[5] Accordingly, George's claim that the court failed to comply with KRS 403.180 is without merit.

CONCLUSION

For the foregoing reasons, the judgment of the Scott Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

William D. Tingley
Louisville, Kentucky

Brandi L. Simon
Georgetown, Kentucky

BRIEF FOR APPELLEE:

Lisa J. Oeltgen
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[5] This Court has rejected claims similar to George's in *Werner v. Crowe*, No. 2020-CA-1507-MR, 2023 WL 128037, *2-3 (Ky. App. Jan. 6, 2023) (unpublished) and *Mitchell v. Mitchell*, No. 2016-CA-000627-MR, 2018 WL 1773518 (Ky. App. Apr. 13, 2018) (unpublished).