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Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0962-MR

JEANETTE LYNN WILLIAMS APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE ABIGAIL E. VOELKER, JUDGE
ACTION NO. 20-CI-00137

MATTHEW TODD WILLIAMS APPELLEE

AND

NO. 2023-CA-1029-MR

MATTHEW TODD WILLIAMS CROSS-APPELLANT

v.

CROSS-APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE ABIGAIL E. VOELKER, JUDGE
ACTION NO. 20-CI-00137

JEANETTE LYNN WILLIAMS CROSS-APPELLEE

<u>OPINION</u>
<u>AFFIRMING</u>

** ** ** ** **

BEFORE: ACREE, EASTON, AND MCNEILL, JUDGES.

MCNEILL, JUDGE: Jeanette Williams ("Jeanette") appeals from the Campbell Family Court's denial of her CR[1] 60.02 motion to set aside a divorce decree. Matthew Williams ("Matthew") cross-appeals, seeking additional attorney fees. We affirm as to both appeals.

BACKGROUND

Jeanette and Matthew were married on July 5, 1996. The parties separated in 2019. Matthew is a physical therapist; Jeanette works for Fidelity Investments and has a law degree. Matthew filed a petition for dissolution of marriage in Campbell Family Court on February 7, 2020. Jeanette, through counsel, filed a response to the petition. Several months later, Jeanette's counsel withdrew.

Jeannette opposed the divorce and essentially refused to participate in the proceedings. For example, the family court scheduled a case management conference and ordered the parties to mediate, but Jeanette declined so the mediation never occurred. She was also ordered to supply Matthew with copies of her retirement and investment account statements but never did.

A final hearing was held on March 11, 2021. Jeanette did not attend. Following the hearing, the family court entered findings of fact and conclusions of

[1] Kentucky Rules of Civil Procedure.

law and a decree of dissolution, awarding Matthew $902,164.22 in assets and Jeanette $898,453.11 in assets. Of note, twelve days after the entry of the decree, Jeanette retained new counsel but did not file a motion to alter, amend, or vacate or notice of appeal.

Several months later, Jeanette filed a CR 60.02 motion seeking relief from the divorce decree on several grounds, primarily that her mental health had kept her from participating in the divorce proceedings. She argued that several assets were omitted from the judgment or allocated in error and requested the family court conduct a hearing and amend the judgment to correct the same. The family court held three evidentiary hearings on the CR 60.02 motion and took hours of testimony. Following the hearings, the court entered detailed findings of fact and conclusions of law, generally denying the motion for CR 60.02 relief. The court did amend the judgment to correct several mistakes stipulated by Matthew.

Subsequently, Matthew filed a motion for attorney fees under KRS[2] 403.220, requesting $85,824.44 in attorney fees incurred in defense of the CR 60.02 motion. After considering the parties' financial resources and Jeanette's unwillingness to agree to Matthew's stipulations to correct errors in the judgment before the CR 60.02 hearing, the family court awarded $30,000 in attorney fees. This appeal and cross-appeal followed.

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[2] Kentucky Revised Statutes.

STANDARD OF REVIEW

We review both the denial of a CR 60.02 motion and a ruling on attorney fees for abuse of discretion. *Foley v. Commonwealth*, 425 S.W.3d 880, 886 (Ky. 2014); *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004). The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citing 5 AM. JUR. 2d *Appellate Review* § 695 (1995)).

ANALYSIS

Turning first to Jeanette's appeal, she argues the family court erred in denying her CR 60.02 motion. We begin our analysis by noting that "[r]elief pursuant to CR 60.02 is an extraordinary remedy which should be cautiously granted." *Copas v. Copas*, 359 S.W.3d 471, 476 (Ky. App. 2012) (citing *Baze v. Commonwealth*, 276 S.W.3d 761, 765 (Ky. 2008)). "The burden of proof in a CR 60.02 proceeding falls squarely on the movant to affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief." *Foley*, 425 S.W.3d at 885 (internal quotation marks and citation omitted). "Therefore, we will affirm the lower court's decision unless there is a showing of some 'flagrant miscarriage of justice.'" *Id.* (citation omitted).

As an initial matter, Matthew argues Jeanette's CR 60.02 motion should have been denied on procedural grounds because her arguments could have been raised in a motion to alter, amend, or vacate or on direct appeal. We agree. Jeanette's CR 60.02 motion primarily concerned assets omitted from or wrongly allocated in the divorce decree. "[T]he purpose of CR 60.02 is to bring before a court errors which (1) had not been put into issue or passed on, and (2) were unknown and could not have been known to the moving party by the exercise of reasonable diligence and in time to have been otherwise presented to the court." *Brozowski v. Johnson*, 179 S.W.3d 261, 263 (Ky. App. 2005) (citation omitted). "CR 60.02 motions are limited to afford special and extraordinary relief not available in other proceedings." *Baze*, 276 S.W.3d at 765 (citation omitted). Jeanette retained counsel twelve days after the entry of the divorce decree, but no CR 59.05 motion or appeal was filed. While Jeanette claims in her appellant brief that her mental breakdown prevented her from filing a CR 59.05 motion or appeal, she does not explain why her counsel did not.[3] Regardless, as an additional basis to affirm the family court, we proceed to the merits.

CR 60.02 provides in relevant part:

> On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final

[3] Further, attorney negligence is not a ground for relief under CR 60.02. *Vanhook v. Stanford-Lincoln Cnty. Rescue Squad, Inc.*, 678 S.W.2d 797, 799 (Ky. App. 1984).

> judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; . . . (c) perjury or falsified evidence; . . . (d) fraud affecting the proceedings, other than perjury or falsified evidence; . . . or (f) any other reason of an extraordinary nature justifying relief.

Jeanette's main argument on appeal is that her mental health prevented her from participating in the divorce proceedings which amounts to excusable neglect under CR 60.02(a) or a reason of extraordinary nature justifying relief under CR 60.02(f). However, she also references CR 60.02(a) mistake, (c) perjury or falsified evidence, and (d) fraud. To the extent she seeks relief on these grounds, we briefly address them below.

As to (a) mistake, (c) perjury or falsified evidence, and (d) fraud, Jeanette claims certain assets were not disclosed or were misrepresented at the final hearing, making the award inequitable. She does not specifically state which assets were not disclosed or were misrepresented. From a review of the record, it appears most of Jeanette's concerns were remedied by the family court in its CR 60.02 order or subsequent orders.

For instance, in her CR 60.02 motion, she argued the inclusion of a non-vested Fidelity Retiree Health Reimbursement Plan ("RHRP") account in the court's calculations without allocating the risk of loss to both parties was a mistake warranting relief under CR 60.02(a). Matthew conceded this error and the court ordered Matthew to transfer an amount equal to half the value of the RHRP

account to Jeanette via Qualified Domestic Relations Order should the RHRP account not fully vest upon Jeanette turning fifty-five. Similarly, as to CR 60.02(c), perjury or falsified evidence, Jeanette claimed Matthew failed to disclose assets at their property on John Miller Road. Matthew conceded the error, and the court ordered the property to be equally divided. In effect, the court granted the CR 60.02 motion as to these claims.

Concerning CR 60.02(d), fraud affecting the proceedings, Jeanette alleged Matthew did not disclose that her inheritance money funded a certain Fidelity investment account, making the account her non-marital asset. The family court found the confusion caused by the commingling of assets and Jeanette's substantial withdrawals from the account was a credible explanation for why Matthew did not mention the inheritance money at the final hearing. The court ruled Matthew's conduct did not amount to fraud. Jeanette does not specifically address the court's ruling in her brief; therefore, we find any error on this issue waived.

Turning to Jeanette's primary argument on appeal, she claims she was incapable of participating in the divorce action due to a severe mental health crisis which qualifies as excusable neglect under CR 60.02(a) or a reason of an extraordinary nature justifying relief under CR 60.02(f). Her brief recounts extensive evidence of her mental health issues (some of it sobering) around the

time of her divorce, including diagnoses of PTSD and depression, suicide attempts, and an involuntary 72-hour mental health hold days after the divorce decree. The family court acknowledged Jeanette's mental health issues, but ultimately determined "such did not prevent her from participating in the divorce process and does not warrant relief as excusable neglect . . . [or] as an extraordinary circumstance[]."

The court noted that while several mental health professionals testified Jeanette suffered from depression and PTSD, "none of the professionals had issues with [Jeanette]'s competency in everyday life." It pointed to her ability to take care of her son and fulfill her "significant position" with Fidelity during the same period. Most compelling to the family court was the testimony of Gary Jacobs, a clinical therapist, who treated Jeanette from May 2020 to June 2021. It found "[Jeanette] and Mr. Jacobs discussed intentionally failing to participate [in the divorce proceeding] as a form of civil disobedience. . . . Mr. Jacobs described [Jeanette] as bright, intelligent with good logical reasons to support her decision to not participate in the divorce process."

The court also referenced Jacobs' treatment records which substantiated his testimony. For instance, one entry notes that Jeanette "reported that she declined to participate in mediation due to it violating her values, morals, and desire to pursue what is best for her family[.]" The services rendered that day

included watching a "video on civil disobedience in history . . . [Jeanette] stated full awareness of potential consequences for her choice not to participate in the legal process and she stated acceptance of any potential consequences." Another entry reports "[Jeanette] continues to desire not to connect with legal counsel or to participate in the legal process of ending the marriage." Finally, a third record states "[Jeanette] stated an intention not to participate in the divorce proceedings due to her convictions and desire to see the marriage reconciled[.]"

Jeanette does not directly challenge the family court's finding that her mental health issues did not prevent her from participating in the divorce proceeding. Instead, she recounts her mental health issues and argues they are grounds for relief under CR 60.02(a) or (f). Essentially, she disagrees with the family court's weighing of the evidence. "As fact finder, the family court is in the best position to evaluate the testimony and to weigh the evidence, and, so, an appellate court should not substitute its own opinion for that of the family court." *J.P.T. v. Cabinet for Health and Family Services*, 689 S.W.3d 149, 158 (Ky. App. 2024) (internal quotation marks and citation omitted).

Substantial evidence supported the family court's finding that Jeanette's mental health issues did not prevent her from participating in the divorce proceeding. As such, Jeanette has failed to demonstrate excusable neglect or any other extraordinary circumstance justifying relief. Under these facts, we cannot

say the family court abused its discretion in denying her relief under CR 60.02(a) or (f).

Finally, Jeanette argues the family court erred in awarding Matthew attorney fees. Matthew moved for an award of $85,824.44 in attorney fees incurred in defending the CR 60.02 motion. The family court granted the motion but limited the award to $30,000. KRS 403.220 provides in relevant part:

> The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.

"[A] trial court has broad discretion in awarding attorney fees to either party in a dissolution proceeding." *Age v. Age*, 340 S.W.3d 88, 97 (Ky. App. 2011) (citation omitted). KRS 403.220 "requires only that the trial court consider the financial resources of the parties before awarding attorney's fees . . . ." *Smith v. McGill*, 556 S.W.3d 552, 555 (Ky. 2018). The family court considered the financial resources of the parties as well as Jeanette's conduct in awarding attorney fees. It found Jeanette unreasonably delayed the CR 60.02 proceedings by declining to accept Matthew's offer to stipulate to many of her alleged errors in the judgment before the hearing. "[O]bstructive tactics and conduct, which multiplied the record and the proceedings are proper considerations justify[ing] both the fact and the amount

of the award." *Sexton*, 125 S.W.3d at 273 (internal quotation marks and citations omitted). We find no error.

On cross-appeal, Matthew argues the family court erred in limiting his attorney fees. He contends Jeanette's "baseless [CR 60.02] motion and lack of cooperation and obstruction throughout the case . . . caused [him] excessive and unnecessary attorneys' fees[.]" "The amount of an award of attorney's fees is committed to the sound discretion of the trial court . . . ." *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990). Here, the family court considered Jeanette's conduct in awarding Matthew $30,000 in attorney fees. "Accordingly, we cannot say that the trial court's decision falls outside the 'wide latitude' given it in such matters." *Smith v. Smith*, 235 S.W.3d 1, 19 (Ky. App. 2006), *as modified* (Feb. 10, 2006) (citation omitted). We find no abuse of discretion.

Based upon the foregoing, the orders of the Campbell Family Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-APPELLEE:

Donna M. Bloemer
Covington, Kentucky

BRIEFS FOR APPELLEE/CROSS-APPELLANT:

Chrissy Dunn Dutton
Cincinnati, Ohio