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Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-1189-MR

RONNIE WAYNE JOLLY — APPELLANT

v.

APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE LISA MORGAN, JUDGE
ACTION NO. 18-CI-00202

AMY MICHELLE JOLLY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, L. JONES, AND MCNEILL, JUDGES.

CETRULO, JUDGE: Ronnie Wayne Jolly ("Ronnie") appeals from an order of the Bourbon Family Court denying his motion for relief from a judgment pursuant to Kentucky Rule of Civil Procedure ("CR") 60.02. The judgment he sought to set aside was his decree of dissolution of marriage and the incorporated separation agreement. Upon careful review, we affirm.

BACKGROUND

Ronnie and Appellee Amy Michelle Jolly ("Amy") were married in December 1997 and had three children together. In 2018, Ronnie became the subject of a criminal investigation conducted by the Internal Revenue Service and was subsequently indicted for several federal offenses. That same year, the parties separated, and Amy commenced this divorce action in September 2018. Ronnie filed an entry of appearance, *pro se*, waiving further service of the petition.

In November 2018, Ronnie entered a guilty plea to numerous fraud and money laundering offenses, and as a result, the government seized all real and personal property in Ronnie and Amy's joint names including a bank account, the marital residence, and 131 acres of real property on Jackstown Road in Bourbon County. As part of his plea agreement, Ronnie forfeited all of his interest in the property seized. Due to Amy's one-half marital interest, Amy and Ronnie entered into a settlement agreement with the government, and that settlement was made part of his plea agreement in April 2019. The settlement released Amy's rights to the bank account and the 131 acres on Jackstown Road, but awarded the marital residence solely to Amy. In February 2021, Ronnie executed a quitclaim deed of the marital residence to Amy and subsequently, the parties agreed to an uncontested divorce.

In 2022, Amy's legal counsel prepared a Separation Agreement, a Waiver of Mandatory Case Disclosures, an Agreed Order to Submit, and a proposed Decree of Dissolution incorporating the parties' Separation Agreement (collectively, the "Separation Agreement"). During later proceedings, Amy presented proof that her counsel mailed the Separation Agreement to Ronnie in May 2022; Ronnie signed them in July 2022; and then mailed them back.[1] In August 2022, Amy filed the documents with the family court. One week later, the family court entered the parties' uncontested divorce decree incorporating their Separation Agreement.

One year later, in August 2023, Ronnie filed a motion for relief from the judgment. He argued that he is entitled to this extraordinary relief because: 1) per CR 60.02(a), (e), and (f), "Ronnie's excusable neglect in being unable to properly negotiate on his behalf given his incarceration and his then-deficient mental state after his suicide attempt justify relief from judgment"; 2) the court's failure to appoint a guardian *ad litem* ("GAL") to protect Ronnie's interests, pursuant to CR 17.04, warranted setting aside the Separation Agreement; and 3) the Separation Agreement terms are facially unconscionable. Amy responded,

[1] Ronnie's attorney alleged that Amy's counsel appeared at the federal prison in July 2022 with the Separation Agreement and no independent counsel present and required them to be signed that day. Amy's counsel absolutely denied that there was any such meeting at the penitentiary or at any time between her counsel and Ronnie.

pointing out that Ronnie failed to put forth any extraordinary reason to justify relief from the Separation Agreement under CR 60.02 and that the agreement itself was not unconscionable. She further replied that CR 17.04 does not apply in a dissolution action where a party elects to proceed with an uncontested divorce, waives a final hearing, and executes documents that agree to proceed with the action without representation.

In September 2023, the family court conducted a hearing, agreed with Amy, and overruled Ronnie's motion. The family court held that the parties' agreement was not unconscionable nor signed under duress, and in fact was an equitable division of property, especially considering the potential seizure of all of their assets due to Ronnie's conviction and plea agreement. The family court further found that Ronnie never requested appointment of a GAL and failed to establish that he was entitled to a GAL under CR 17.04. Ronnie appealed.

STANDARD OF REVIEW

The family court's factual findings "shall not be set aside unless clearly erroneous[.]" CR 52.01. A finding of fact is clearly erroneous if it is not supported by substantial evidence, which is evidence sufficient to induce conviction in the mind of a reasonable person. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (citations omitted). The provisions of a separation agreement 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 . . . that the separation agreement is unconscionable." Kentucky Revised Statutes ("KRS") 403.180(2). "Unconscionable" means "manifestly unfair and unreasonable." *Shraberg v. Shraberg*, 939 S.W.2d 330, 333 (Ky. 1997) (citation omitted). We defer to the family court's broad discretion in weighing the evidence to determine if a separation agreement is unconscionable or if it resulted from duress, undue influence, or overreaching, and we shall not disturb the family court's decision absent an abuse of discretion. *Andrews v. Andrews*, 611 S.W.3d 271, 275 (Ky. App. 2020) (citing *Mays v. Mays*, 541 S.W.3d 516, 524 (Ky. App. 2018)). Similarly, we review a trial court's denial of a CR 60.02 motion for an abuse of discretion. *Lawson v. Lawson*, 290 S.W.3d 691, 693-94 (Ky. App. 2009) (citing *Fortney v. Mahan*, 302 S.W.2d 842, 843 (Ky. 1957)). "The test for abuse of discretion is whether the trial court's decision is arbitrary, unreasonable, unfair, or unsupported by legal principles." *Id.* at 694 (citing *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000)). Finally, statutory interpretation is a question of law subject to *de novo* review. *Marshall v. Marshall*, 559 S.W.3d 381, 383 (Ky. App. 2018) (citation omitted).

ANALYSIS

On appeal, Ronnie argues he is entitled to relief under CR 60.02(a) – due to his inadvertence and mistake in agreeing to the Separation Agreement – and

under CR 60.02(f) – due to the court's failure to appoint a GAL while he was incarcerated. As such, Ronnie argues, the family court erred in denying his motion for relief. Conversely, Amy argues the family court did not abuse its discretion in denying relief because Ronnie did not establish that he was entitled to relief under CR 60.02(a) or (f), or a GAL appointment.

A. CR 60.02(a)

"On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: "(a) mistake, inadvertence, surprise or excusable neglect . . . ." CR 60.02(a). Ronnie argues he mistakenly or inadvertently signed the Separation Agreement and the terms of the contract itself are proof of his mistake. Essentially, he argues the lack of a "meaningful agreement" proves signing the Separation Agreement was a mistake. However, his argument implies the Separation Agreement was unconscionable on its face, but we do not agree. The burden was on Ronnie to show the agreement was unconscionable, a burden he did not meet. *See Peterson v. Peterson*, 583 S.W.2d 707, 711 (Ky. App. 1979) (citing KRS 403.250 and *McKenzie v. McKenzie*, 502 S.W.2d 657 (Ky. 1973)) ("[T]he party challenging the agreement as unconscionable should also have the burden of proof.").

Here, the family court found that the parties' Separation Agreement was not unconscionable nor signed under duress. Also, the family court stated that the agreement was, in fact, an equitable distribution of property, especially considering the potential seizure of assets by the government as a result of Ronnie's criminal conviction and plea agreement. Those facts are not clearly erroneous.

Ronnie argues the verbiage allocating the property – "each party shall receive all property now in his or her own name or possession" – is meaningless because he was incarcerated at the time and "unable to have *any* property in his possession." However, Ronnie correlates being in a jail cell to not owning property. Such a correlation is not absolute; prison inmates could still own belongings stored in another location, controlled by a financial institution, held by friends, family, or trust, etc. Stated another way, just because he did not have any property currently in his jail cell does not make that property allocation language a "mistake." Here, Ronnie and Amy were living separate and apart for about three years before he began his period of incarceration; thus, each keeping his/her own property is equitable and consistent with them living separate lives for an extended period of time. Ronnie does not cite any supporting precedent or explain how this standard property allocation verbiage was "deceptive." Also, Ronnie did not allege

that Amy had taken any of his personal belongings, nor specify any property that he had not received but to which he was entitled.

Also, Ronnie argues that no reasonable person simply surrenders a valuable piece of property "without any consideration," but he did not allege grounds of fraud or undue influence.[2] The award of the marital residence to Amy under the Separation Agreement simply confirmed what he had already affected by signing a quitclaim deed to Amy, as well as his plea agreement and settlement agreement in the criminal case. As the family court noted, it would have been a violation of the settlement agreement with the government in his criminal case to subsequently award some portion of the marital residence to Ronnie, when both parties and the government had agreed to this division – all while he was represented and not incarcerated.

Ronnie failed to meet his burden by not asserting or submitting any proof that the Separation Agreement was a result of "mistake, inadvertence, surprise or excusable neglect." CR 60.02(a). In fact, Ronnie did not show how the terms of the Separation Agreement were inconsistent with standard uncontested divorce language, nor did he show the contract was unfair, unreasonable, or inconsistent with the parties' individual situations. Based upon the evidence

[2] Ronnie's attorney acknowledged that he was not arguing any fraud, deception, or bad act by Amy's counsel or that Ronnie was induced to sign the agreement.

before it, the family court's factual findings were not clearly erroneous, and it did not abuse its discretion in finding that the agreement was not unconscionable.

B. CR 60.02(f)

"On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (f) any other reason of an extraordinary nature justifying relief." CR 60.02. CR 60.02(f) is considered a "catch-all" provision that only applies after CR 60.02(a)-(e) are found not to be applicable. *Snodgrass v. Snodgrass*, 297 S.W.3d 878, 884 (Ky. App. 2009) (citations omitted). This type of relief is exceptional, to be granted cautiously, and only upon a very substantial showing of special circumstances that justify such relief. *Copas v. Copas*, 359 S.W.3d 471, 476 (Ky. App. 2012) (citations omitted).

First, we note a factual contention requiring clarification. Ronnie's attorney asserted that there was no responsive pleading by Ronnie to the divorce petition itself, which was filed well prior to his incarceration. However, the record refutes that assertion. Ronnie did sign and file a *pro se* entry of appearance in 2018, three years prior to his incarceration. Further, the agreement specifically includes acknowledgement by Ronnie that he had the opportunity to consult with counsel and that he waived an independent review of the document by counsel of his own choosing. He also signed – and his signature was notarized – a waiver of

mandatory disclosures of marital and non-marital property, swearing that all property had been disclosed and that neither party wanted to make their assets public. His signature on the uncontested documents further conveyed that he was proceeding *pro se* and waiving any right to a hearing, that he had not been given any advice from Amy's attorneys, but freely and voluntarily entered into the agreement. He confirmed that he had read and reviewed and understood the agreement prior to signing. The parties' Separation Agreement referenced Ronnie's incarceration and specifically waived child support and other expenses for the minor children until after he was released from custody. The parties separately signed, in the presence of a notary, both the proposed decree and an agreed order submitting the matter to the court without a hearing. The decree was signed on August 23, 2022.

Next, we address Ronnie's legal arguments. Ronnie claimed a year later that CR 60.02(f)'s extraordinary relief was warranted because the family court failed to appoint a GAL to protect his interests while incarcerated as required by CR 17.04. CR 17.04 provides:

> (l) Actions involving adult prisoners confined either within or without the State may be brought or defended by the prisoner. If for any reason the prisoner fails or is unable to defend an action, the court shall appoint a practicing attorney as [GAL], and no judgment shall be rendered against the prisoner until the [GAL] shall have made defense or filed a report stating that after careful

> examination of the case he or she is unable to make defense.

Ronnie asserts that the failure of the family court to appoint a GAL requires setting aside the Separation Agreement and points to *Davidson v. Boggs*, 859 S.W.2d 662 (Ky. App. 1993), and *Goldsmith v. Fifth Third Bank*, 297 S.W.3d 898 (Ky. App. 2009), in support of his argument. We agree with his reliance on *Davidson* and *Goldsmith*, but believe these cases support affirming the family court's denial of Ronnie's CR 60.02 motion.

In *Davidson*, the defendant was incarcerated for second-degree assault and second-degree wanton endangerment. *Davidson*, 859 S.W.2d at 663. At the same time, the defendant was also the subject of a tort action. *Id*. at 664. When the defendant had counsel, the trial court entered a judgment fixing the boundary line of the disputed property but reserved the issue of damages for future consideration. *Id*. A few months later, the trial court conducted a jury trial for damages even though neither the defendant nor his attorney were present. *Id*. The jury entered a judgment against the defendant for $113,757.50, and he promptly moved for a new trial pursuant to CR 59.01(a) which the trial court denied. *Id*. This Court reversed, noting that the fact that the defendant had money and could have hired new counsel for the trial did not eliminate the requirement under CR 17.04 to appoint a GAL when a prisoner *fails* to defend an action. *Id*. at 665.

Subsequently in *Goldsmith*, 297 S.W.3d 898, we slightly modified *Davidson*'s holding, noting that incarcerated defendants may waive their right to a GAL under CR 17.04. "Although we did not expressly acknowledge the ability of a prisoner to waive his right to a [GAL] in *Davidson*, we now do so. We now expressly state that the right to the appointment of a [GAL] under CR 17.04 may be waived." *Id.* at 903. However, any such waiver must be express, and that waiver should not be assumed or implied in regard to CR 17.04. *Id*.

Here – *like* the defendant in *Goldsmith* – Ronnie expressly waived his right to legal representation in a civil action while incarcerated for a criminal matter. Ronnie argues that he did not expressly waive his right to a GAL, but we do not agree. Relevant here, a GAL is a legal representative appointed by the court authorized by law to protect the person or estate of a legally incapacitated person and to act in a matter affecting that person or property. *See guardian* and *guardian ad litem*, BLACK'S LAW DICTIONARY (12th ed. 2024). Ronnie expressly waived such representation in his Separation Agreement. The Separation Agreement stated that the signees acknowledged "that they have been given the opportunity to seek advice from an attorney" and "have been provided sufficient opportunity to speak with legal counsel about this matter."

Further, CR 17.04 requires appointment of a GAL if/when a prisoner "fails or is unable to defend an action[.]" Here – *unlike* the defendant in

Davidson – Ronnie did not fail to defend. Criminal proceedings did not occur without his knowledge or involvement; no civil hearings were held without Ronnie's presence; and no judgments were entered against him to which he did not contractually agree. In fact, Ronnie's property was not legally affected beyond the agreed upon terms in the Separation Agreement. Again, Ronnie signed a contract that was consistent with years of negotiation with both Amy and the federal government and amounted to an equitable distribution of assets. Ronnie had entered his appearance, *pro se*, before his incarceration. He acknowledged in his brief that he had read and reviewed the Separation Agreement before signing it. He acknowledged that he had had the opportunity to consult with private counsel, that he was proceeding *pro se* with an uncontested divorce, and he was asking the court to enter a decree consistent with the Separation Agreement and without any hearing for either party. This is completely distinguishable from *Davidson* wherein the incarcerated defendant was not present nor represented at a trial that proceeded in his absence.

We have not been referred to any cases interpreting CR 17.04 in the context of an uncontested divorce proceeding, nor have we located any such cases. Despite the language of the rule, and the holdings of *Davidson* and *Goldsmith*, there is no constitutional right to counsel for civil matters. *May v. Coleman*, 945 S.W.2d 426, 427 (Ky. 1997) (citing *Parsley v. Knuckles*, 346 S.W.2d 1 (Ky.

1961)). The documents executed by Ronnie all confirm that he declined his right to counsel and a contested hearing.

After a *de novo* review of CR 17.04, our ultimate review of the CR 60.02(f) motion for relief from judgment is limited to whether the family court abused its discretion. Under CR 60.02(f), the family court must consider: "(1) whether the moving party had a fair opportunity to present his claim at the trial on the merits, and (2) whether the granting of CR 60.02(f) relief would be inequitable to other parties." *Snodgrass*, 297 S.W.3d at 884 (citation omitted). Applying those factors, neither party participated in a trial on the merits, but rather both agreed to dissolve their marriage by agreement without a hearing. Further, the family court found that the granting of relief from that agreement would be inequitable to Amy.

The family court was not asked to appoint a GAL while Ronnie was incarcerated, but rather was faced with a motion for extraordinary relief after he was released and represented by counsel, upon allegations that the agreement itself was unconscionable. The family court specifically found that it was not, and we afford deference to the court on such a ruling. Further, the family court's order was totally in keeping with the parties' prior agreement with the federal government, made before Ronnie was incarcerated and while he was represented by counsel.

We note that the best practice for a family court judge is to appoint a GAL for any incarcerated party to a divorce, if there is doubt as to whether the party has been properly served, or is unable to or has "failed to defend." CR 17.04 requires such an appointment in that situation. Here, we do not agree that Ronnie failed to defend, requiring the appointment of a GAL. Further, we do not read the rule as requiring family courts to set aside an enforceable agreement under CR 60.02, and to appoint a GAL, where the incarcerated person has elected to proceed without counsel and without contest.

CONCLUSION

For all the foregoing reasons, we AFFIRM the Bourbon Family Court.

ALL CONCUR.

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