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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001803-MR
AND
NO. 2006-CA-001827-MR

GEORGE W. CAMPBELL

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE JERRY J. BOWLES, JUDGE
ACTION NO. 99-FC-006862

GINGER C. CAMPBELL

APPELLEE/CROSS-APPELLANT

OPINION
REVERSING AND REMANDING WITH DIRECTIONS

** ** * ** * ** *

BEFORE: ACREE, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: George W. Campbell brings Appeal No. 2006-CA-001803-MR and Ginger C. Campbell brings Cross-Appeal No. 2006-CA-001827-MR from a July 31, 2006, Findings of Fact, Conclusions of Law and Judgment, styled as a judgment of the Jefferson Circuit Court, Family Court Division (family court), but prepared by an arbitrator. The judgment was signed and entered by the court

without independent review. We reverse and remand with directions Appeal No. 2006-CA-001803-MR and Cross-Appeal No. 2006-CA-001827-MR.

The “judgment” appealed in this case was the result of an arbitration procedure employed after the case was commenced in Jefferson Family Court. The parties agreed to the arbitration which was endorsed by the Jefferson Family Court purportedly to expedite adjudication of the parties’ underlying domestic dispute.¹

The record indicates that George filed a petition for dissolution of marriage in 1999. The family court dissolved the marriage by decree entered July 19, 2001, but reserved other issues for future adjudication. Eventually, an Arbitration Agreement and Agreed Order (arbitration agreement or order) was entered on August 5, 2005. This arbitration order was signed by the parties, their counsel, the prospective arbitrator, and the family court judge. It set forth with meticulous detail an arbitration procedure under which the parties, arbitrator, and court would operate.

Generally, the arbitration order vested the arbitrator with absolute authority to resolve all remaining issues between the parties. Thereunder, the arbitrator was required to hold a hearing on those issues and to render written findings of fact, conclusions of law, and judgment adjudicating same. Of particular import, the arbitration order required the family court to “enter” the

¹ We question how effectively this arbitration procedure expedited the resolution of this case. The action was commenced in 1999, and a bifurcated dissolution decree was entered in July 2001. On August 5, 2005, the arbitration order was entered permitting this action to be heard by an arbitrator. The judgment was entered July 31, 2006.

arbitrator's judgment as a judgment of the court without independent judicial review or without an opportunity of either party to submit "objections" to the court.² Appellate review of the judgment was expressly provided for "upon the same ground as if decided by the [family] court."

Pursuant to the arbitration order, the arbitrator proceeded to conduct a hearing and, thereafter, tendered a judgment which effectively was an arbitration award. The arbitration award was wholly prepared by the arbitrator but styled as a judgment of the Jefferson Family Court. Therein, the arbitrator made detailed findings of fact and conclusions of law. Without benefit of independent review, the family court signed the judgment, presumably to confirm the arbitration award. The award was entered of record on July 31, 2006, as a judgment of the family court (July 31, 2006, judgment). Both parties undertook an appeal (Appeal No. 2006-CA-001803-MR and Cross-Appeal No. 2006-CA-001827-MR) from the July 31, 2006, judgment.

In these appeals, the parties raise numerous issues on the merits based on the judgment entered below. However, we question the ability of this Court to review these arguments if, as the parties argue, this was a valid arbitration under KRS Chapter 417. In *3D Enterprises Contracting Corp. v. Lexington-Fayette Urban County Government*, 134 S.W.3d 558 (Ky. 2004), the Kentucky Supreme Court held that a court may only set aside an arbitration award pursuant to the

² The arbitration order did permit objections to the findings of fact, conclusions of law and proposed judgment to be filed and heard before the arbitrator, not the family court.

grounds set forth in KRS 417.160(1). Those grounds enumerated in the statute, read as follows:

(1) Upon application of a party, the court shall vacate an award where:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) The arbitrators exceeded their powers;

(d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of KRS 417.090, as to prejudice substantially the rights of a party; or

(e) There was no arbitration agreement and the issue was not adversely determined in proceedings under [KRS 417.060](#) and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court is not ground for vacating or refusing to confirm the award.

Neither of the parties to this appeal has argued any of the statutory grounds set forth above. If the arbitration statute applies, we would be duty bound to summarily affirm both appeals. *Id.* However, the parties submit that their “agreement” permits this Court to review the judgment as if the family court had conducted the proceedings and actually made the findings and conclusions on appeal, rather than merely confirming the award under KRS 417.150. Effectively,

the parties suggest that the laws of the Commonwealth of Kentucky can be modified, changed, or interpreted as needed by agreement of the parties to create a hybrid proceeding that may be reviewed accordingly by this Court. We decline to accept this suggestion as the law in Kentucky and believe there exists no present statutory or constitutional authority to support this hybrid domestic proceeding being conducted by the Jefferson Family Court. Accordingly, our review at this time is limited to the propriety of the arbitration proceedings in a family court case under the current law in Kentucky.

Upon review of the record, we ordered the parties to submit supplemental briefs to address the legality of the arbitration order, the arbitration procedure employed thereunder, the arbitration award, and the resulting judgment (July 31, 2006, judgment). The parties argued that the arbitration order, the ensuing arbitration procedure, and the arbitration award (judgment) were legally valid and fell within the parameters of the Kentucky Uniform Arbitration Act. For the following reasons, we disagree.

I. FAMILY COURTS IN KENTUCKY

Our analysis begins with a review of the history and jurisdiction of the family court system in Kentucky. The family court was created in 1991 as a pilot program in Jefferson County. The court was designed to focus solely on the needs of families and children by allowing one judge to hear all of the families' legal problems and issues. Subsequently, under the guidance of then Chief Justice Joseph Lambert, the pilot project expanded across Kentucky. In November 2002,

the family court became a permanent part of the Kentucky Constitution upon the passage of a constitutional amendment that was approved by voters in all of Kentucky's 120 counties. Today, family courts operate in 71 of Kentucky's 120 counties. The Court of Justice website gives the following discussion of the scope, function and jurisdiction of family courts in Kentucky today:

One Family, One Judge, One Court

Family Court is involved in the most intimate and complex aspects of human nature and social relations. For that reason, Family Court uses a case management process that distinguishes it from other trial courts. With the One Family, One Judge, One Court approach, cases are presented in a single court, allowing the same judge to hear all matters involving a particular family. This reduces the stress that can arise when individuals are shuttled between courts to resolve a variety of issues.

Focusing on the Needs of Families

Because Family Court gives cases involving families and children the highest priority, these cases do not compete with criminal and other civil cases for judicial time. As a division of Circuit Court, which is the highest trial court in Kentucky, Family Court employs full-time judges with the same qualifications as those who serve the other divisions of Circuit Court.

In addition to the family matters heard in Circuit Court, Family Court judges also handle family law matters that were traditionally decided in District Court. Family Court jurisdiction is defined by KRS 23A.100 and 23A.110 and includes the following:

- Dissolution of marriage
- Spousal support and equitable
- Distribution
- Child custody, support and visitation
- Paternity, adoption
- Domestic violence
- Dependency, neglect and abuse

- Termination of parental rights
- Runaways, truancy, beyond control

II. DELEGATION OF JUDICIAL DUTIES AND POWERS TO THE ARBITRATOR

As noted, the family courts were officially made a part of the Kentucky Judicial System by constitutional amendment in November 2002. Kentucky Constitution, Section 112(6). In 2003, the jurisdiction of the family court was set out by the General Assembly in KRS 23A.100. Specifically, KRS 23A.100(1) states as follows:

(1) As a division of Circuit Court with general jurisdiction pursuant to [Section 112\(6\) of the Constitution of Kentucky](#), a family court division of Circuit Court shall retain jurisdiction in the following cases:

- (a) Dissolution of marriage;
- (b) Child custody;
- (c) Visitation;
- (d) Maintenance and support;
- (e) Equitable distribution of property in dissolution cases;
- (f) Adoption; and
- (g) Termination of parental rights.

Equally relevant to the passage of this legislation which established the jurisdiction of the family court was the passage of KRS 23A.120, which abolished domestic relations commissioners in those counties where family courts were established or existed. Prior to the passage of this statute, a domestic

relations commissioner could be appointed by the chief circuit judge in each county. CR 53.03. The role of the domestic relations commissioner was to hear proof in domestic cases and make recommendations to the circuit judge. The judge was duty bound to review the report of the commissioner, consider objections, if any from the parties and issue findings of fact and conclusions of law. CR 52.01, 53.03, 53.04, 53.05 and 53.06. In those counties where family courts have not been established, domestic relations commissioners may still be utilized today by circuit courts if the referral of domestic matters is provided for by local rules approved by the Chief Justice. CR 53.03. In Jefferson County, domestic relations commissioners have been abolished in their entirety.

Thus, this Court is clearly faced with the troublesome issue of whether the Jefferson Family Court has improperly delegated its constitutional duties, including its decision making authority to an arbitrator in contravention of Section 109 of the Kentucky Constitution and in circumvention of the legislative intent regarding the duties of family court judges.

In Kentucky, each court is vested with constitutional decision making responsibility in every case within its jurisdiction. *Bingham v. Bingham*, 628 S.W.2d 628 (Ky. 1982); 15 Louise E. Graham & James E. Keller, *Kentucky Practice – Domestic Relations Law* § 13.4 (2008). This decision-making responsibility also finds expression in Kentucky Rules of Civil Procedure 52.01. In *Bingham*, the Kentucky Supreme Court upheld the delegation of the clerical task of drafting proposed findings of fact and conclusions of law. However, the

Supreme Court did not condone the delegation of a court's actual power or duty to make findings of fact and to draw conclusions therefrom. *Bingham*, 628 S.W.2d 628. The Supreme Court noted that the distinguishing factor in determining whether an improper delegation of the court's powers had occurred was whether there was a "showing that the decision-making process was not under the control of the trial judge" or whether "these findings and conclusions were not the product of the deliberations of the trial judge's mind." *Id.* at 629-630. In this case, the arbitration agreement clearly and succinctly states the family court judge has delegated his power to enter findings and conclusions in the family court to the arbitrator. This delegation of decision-making authority is simply improper, in our opinion. Indeed, it is axiomatic that a court's mechanical adoption of a judgment containing findings of fact and conclusions of law made by a third party violates the court's constitutional decision-making authority and CR 52.01. *See Ky. Const., § 109; Bingham*, 628 S.W.2d 628.³

The improper delegation of the family court's duties and powers is further amplified in paragraph 2 of the arbitration agreement which gives the arbitrator the authority to issue sanctions by awarding attorney's fees as provided for in CR 11, CR 37, and KRS 403.220. These duties and powers are exclusively reserved to the discretion of the family court and not otherwise subject to delegation to some third party. Perhaps, most egregious under the arbitration

³ This is, of course, contrasted to an arbitration award that may be confirmed by the court pursuant to the provisions of the Uniform Arbitration Act and then enforced as a judgment of the court.

agreement is that the arbitrator was permitted to sanction George for contempt which could be purged upon the payment of \$5,000 to Ginger within thirty days upon entry of the judgment. Under the arbitration agreement, this sanction for contempt was adopted by the family court without review. We find no authority whatsoever that permits a judge to delegate the inherent power of a court to sanction for contempt, without a hearing or any other due process consideration that is otherwise exclusively reserved to constitutionally elected judges in this state.

Finally, since domestic relations commissioners in counties establishing family courts have been abolished, there is no authority that allows family court judges to delegate cases to an arbitrator. It appears obvious to this court that had the General Assembly intended for family court judges to be able to delegate their duties to third parties outside the court system, domestic relations commissioners would not have been abolished. In the alternative, the General Assembly could have expressly provided for a delegation of duties, albeit such a delegation would likely have trouble passing constitutional scrutiny.

One final observation on the improper delegation issue – we note that if the delegation of powers and duties provided for under the arbitration agreement in this case is valid, legal and constitutional, there would be no restriction whatsoever to restrict parties from entering into arbitration agreements regarding any case within the jurisdiction of the family court, including child custody proceedings, child support proceedings, proceedings pertaining to visitation,

adoption proceedings, domestic violence or abuse proceedings, or even proceedings involving a contested termination of parental rights.⁴ Until the Kentucky Supreme Court directs otherwise, we can neither justify nor condone such an invasion of the family court's jurisdiction.

III. LOCAL RULES OF THE JEFFERSON FAMILY COURT (JFRP)

In order to fully analyze and understand all of the legal dynamics involved with arbitration within the family court system, we must also review the local rules of the Jefferson Family Court. The authorization to enact local rules is set forth in SCR 1.040(3)(a). Local rules must be approved by the Kentucky Supreme Court. Jefferson County has, perhaps, the most comprehensive and extensive local rules governing family court practice of any county in Kentucky that has established family courts. The Kentucky Supreme Court in *Abernathy v. Nicholson*, 899 S.W.2d 85 (Ky. 1995), made the following observation regarding local rules:

The authorization to enact local rules pursuant to [SCR 1.040\(3\)\(a\)](#) is subject to two conditions: first, that no local rule shall contradict any substantive rule of law or any rule of practice and procedure promulgated by this Court, and second, that it shall be effective only upon Supreme Court approval.

Id. at 87.

Our discussion of the JFRP is pertinent for two reasons. First, there is absolutely no provision in the JFRP currently approved by the Kentucky Supreme

⁴ Under present law, arbitration of these proceedings would interfere with the family court's duty to protect and insure the best interests of children. *See Williams v. Phelps*, 961 S.W.2d 40 (Ky. App. 1998).

Court that permits the assignment of domestic relations cases to an arbitrator.

Second, the delegation of judicial duties to the arbitrator appears to be in direct violation of the JFRP.

While there is no provision for arbitration in JFRP, there are extensive provisions for mandatory mediation by the parties on all substantive issues in the divorce. If a settlement cannot be reached through mediation, JFRP 711 provides that a trial shall be had. JFRP 702 specifically states that “[t]rials in chief of all domestic relations cases and all hearings related to child custody shall be heard by a judge.” This case is clearly a contested, domestic relations case pertaining to property division which was not heard in chief by a family court judge as required by JFRP 702.

As noted, Jefferson County does require mediation in all contested cases. JFRP provides an extensive court mediation fee schedule that provides a sliding scale based upon the parties’ annual gross income. For example, in cases where both parties total income is less than \$38,000, they will never pay more than \$70 per hour to the mediator, which would then be allocated to the respective parties based on their actual income. A party who makes less than \$5,000 per year in income would only pay a maximum of \$5 per hour to the mediator. In cases where the parties’ annual gross income is greater than \$38,000, the maximum a mediator can charge is \$160 per hour. The JFRP’s mediation rule and fee schedule is obviously designed to be fair, equitable, and affordable for citizens of all incomes in Jefferson County. In contrast, the arbitrator in this case charged the

sum of \$225 per hour, which was allocable to the parties at the discretion of the arbitrator. Notwithstanding that the parties agreed to pay the arbitrator fees, what is most distressing about this scenario is that arbitration is obviously not a viable alternative or available to parties with lower incomes who can not afford to pay an arbitrator the sum of \$225 per hour. This effectively creates a class system within Jefferson Family Court proceedings where more affluent individuals have the opportunity to pay for a “private judge” to conduct their proceedings – while parties of lesser means and income must have their case heard by constitutionally elected judges in perhaps a less expeditious time frame. Regardless of how noble the intent of utilizing arbitration in divorce proceedings, such a system that permits affluent individuals the opportunity to expedite the disposition of their domestic relations cases in family court that is otherwise unavailable or cost prohibitive to persons of lesser incomes, appears to be both unconscionable and unconstitutional on its face, in our opinion.

IV. KENTUCKY UNIFORM ARBITRATION ACT

Notwithstanding our conclusion that family courts may not delegate their constitutional duties and powers to arbitrators in domestic relations cases, in order to finalize our analysis, we believe it pertinent to review in detail why we also conclude that domestic relations proceedings under KRS Chapter 403 may not be subject to arbitration under KRS Chapter 417.

In Kentucky, the General Assembly enacted the Uniform Arbitration Act (Arbitration Act), codified as Kentucky Revised Statutes (KRS) Chapter 417. Thereunder, an arbitration agreement or an arbitration award may be enforced by a court of competent jurisdiction if the agreement or award conforms with the provisions of the Arbitration Act. In this case, the arbitration award, which became the July 31, 2006, judgment, is unenforceable, in our opinion, under the Arbitration Act because: (1) a dissolution proceeding is not an arbitratable controversy within the meaning of KRS 417.050, and (2) the arbitration procedure employed herein did not require the arbitration award to be confirmed by the court as mandated by KRS 417.150. We address each alternative basis separately.

To begin, the Arbitration Act specifically sets forth the types of disputes amenable to arbitration. KRS 417.050 reads, in relevant part:

A written agreement to submit any existing controversy to arbitration or a provision in written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.

Essentially, KRS 417.050 provides that “any existing controversy” may be subject to arbitration by written agreement of the parties. The term “controversy” is not defined by the Arbitration Act.⁵ However, the Arbitration Act is generally given a broad and liberal interpretation to further its goals. *See Mt. Holly Nursing Ctr. v.*

⁵ Kentucky Revised Statutes (KRS) 417.050 specifically exempts from its provisions arbitration agreements between employers and employees or their respective representatives and insurance contracts.

Crowdus, 281 S.W.3d 809 (Ky.App. 2008)(citing *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)). The term “controversy” in KRS 417.050 would ordinarily be afforded such an expansive interpretation. In our review of Kentucky law, we can find no published authority that has addressed whether domestic relations cases fall within the purview of KRS 417.050. But, the ambit of the term “controversy” cannot be boundless and in Kentucky, its definition is circumscribed by the state’s compelling interests in the area of domestic relations, in our opinion.

From time immemorial, domestic relations jurisprudence has been subject to the exclusive and extensive control of the sovereign or the state.⁶ Each state regulates marital relations of its citizens and provides for dissolution of the marital relationship. In this Commonwealth, the judiciary is vested with the sole authority to dissolve a marriage and to decide issues ancillary to such dissolution.⁷ Although the court is said to exercise equitable powers, a domestic relations proceeding is recognized as neither an action strictly in equity nor in law but rather an action *sui generis*. 27A C.J.S. *Divorce* § 9 (2005).

Just as a domestic relations action is unique, the role of the court in such an action is, likewise, distinctive. It is the duty of the court to safeguard the interests of the public, to promote public policy, and to protect the interests of the parties (including any children):

⁶ This control is, of course, subject to constitutional constraints.

⁷ Among these ancillary issues are property division, spousal maintenance, child custody, and child support.

In domestic relations cases the court in the administration of its jurisdiction has a responsibility and correlative discretionary power greater than in other cases. They are in a category different from private actions in which personal rights of the parties alone are affected. This appertains more especially to the welfare of children, if any. Divorce is not granted exclusively to meet the desire of the parties. The state is concerned in the preservation of the marriage relation, for the underlying reason that the home is the basic unit of society. Public policy enters into the proceeding in order to avoid mischiefs that may arise from the status of a man and woman being bound together by law but in fact unmarried. The questions of the protection and welfare of children may be transcendent. So it is said that in an important sense the state is a quasi party and the children are real parties by representation. . . .

Huls v. Smith, 252 S.W.2d 917, 918-919 (Ky. 1952). Sundry statutory provisions bestow this singular responsibility upon the court.⁸ Because of the state's compelling interests in the area of domestic relations and the court's unique protective role in such area of the law, especially in the establishment of family courts through constitutional amendment, we conclude that a domestic relations proceeding is not an arbitratable controversy within the meaning of KRS 417.050 under the present law in Kentucky. Simply put, these types of domestic disputes are not amenable to binding arbitration absent independent and meaningful judicial oversight.⁹ Thus, in our case, the parties' unresolved issues incident to their

⁸ See KRS 403.140; KRS 403.160; KRS 403.180; KRS 403.190; KRS 403.200; KRS 403.211; KRS 403.270; KRS 403.280; KRS 403.290; KRS 403.300; KRS 403.310; KRS 403.320; KRS 403.330; KRS 403.340; and KRS 403.350.

⁹ Our conclusion is buttressed by KRS 403.180. Thereunder, a parties' settlement agreement must be subject to judicial oversight upon grounds of unconscionability. Also, issues pertaining to custody, support, and visitation of children may not be resolved by such an agreement. By contrast, in this case, the purported award became the judgment of the court by agreement of the parties and the court, without any judicial review or oversight. The parties' argument that the

domestic relations action were not amenable to arbitration pursuant to KRS 417.050, and the arbitration award is unenforceable under the Arbitration Act.

We now address the alternative basis for concluding that the arbitration award is unenforceable per the Arbitration Act. Under the Arbitration Act, an arbitration award must be initially confirmed by the court before such award may be enforced as a court judgment. KRS 417.150; KRS 417.180.

Confirmation of the arbitration award is statutorily provided for in KRS 417.150:

Upon application of a party, the court shall confirm an award unless, within the time limits hereinafter imposed, grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in KRS 417.160 and [417.170](#).

Pivotal to the statutory confirmation process is the opportunity afforded a party to raise grounds before the court supporting the vacation or modification of the arbitration award. KRS 417.160; KRS 417.170. The Arbitration Act clearly requires that a party be given the opportunity to challenge the arbitration award in court and requires the court to consider such challenge before confirming the arbitration award. KRS 417.150; KRS 417.160; KRS 417.170; KRS 417.180.

These provisions of the Arbitration Act are mandatory and are an essential prerequisite to the enforceability of an arbitration award.

In the case *sub judice*, the arbitration procedure employed by the parties, as reflected in the arbitration order, essentially dispensed with the confirmation process provided for under the Arbitration Act. Instead, the family circuit court “confirmed” an award upon signing the judgment is a fiction, at best.

court endorsed the arbitration award without any independent judicial review and without the opportunity of either party to challenge the award before the court.¹⁰ In effect, the family court was relegated to a mere automaton.¹¹ Such arbitration procedure is clearly contrary to the express provisions of the Arbitration Act, thus rendering the judgment (arbitration award) unenforceable in our opinion, even if we had not held that there was an improper delegation of power and duties by the family court to the arbitrator.¹²

V. SUMMATION

To summarize, we hold the family court erred by “confirming” the arbitration award and by converting it to a judgment of the court. As hereinbefore held, under our interpretation of both the constitution and applicable law in Kentucky, the Findings of Fact, Conclusions of Law and Judgment entered by the family court are neither enforceable nor legally valid. Under JFRP 702 and under CR 52.01, the family court is required to conduct a hearing or trial upon the

¹⁰ As discussed earlier, the parties filed motions to vacate the judgment (arbitration award); however, the arbitrator solely ruled upon the motions.

¹¹ Under Kentucky Rules of Civil Procedure (CR) 52.01 and Jefferson Family Court Rules of Practice 702, the family court is required to hold a hearing upon all pending matters and to make independent findings of fact and conclusions of law. The case is an attempt at a hybrid proceeding – one where arbitration is employed below, but the arbitrator’s decision is treated as a judgment and thus subject to normal appellate review based on the fiction that the family court judge had conducted the proceedings below. As discussed earlier in this opinion, under this scenario, the Court of Appeals would be required to ignore the grounds for vacating an award, contrary to KRS 417.160 and the Supreme Court precedent in *3D Enterprises Contracting Corp. v. Lexington-Fayette Urban County Government*, 134 S.W.3d 558 (Ky. 2004).

¹² We acknowledge, as argued by the parties, that other jurisdictions have permitted arbitration in domestic relations proceedings. However, we find this precedent unpersuasive under the Kentucky Constitution and applicable statutes. Until the Kentucky Supreme Court directs otherwise or the General Assembly expressly permits arbitration in domestic relations cases, this practice is not permitted under the present law in Kentucky.

pending dissolution action and to make independent findings of fact and conclusions of law. The judgment is reversed and upon remand, the family court shall conduct all proceedings as mandated by the Constitution, applicable statutes, and local rules. Additionally, based upon our review of applicable law, we note that this is a case of first impression in Kentucky. Accordingly, this opinion is limited to the cases before this Court now on appeal and has prospective application only as to any pending or future arbitration proceedings in the Jefferson Family Court or any other family court in Kentucky.

For the foregoing reasons, Appeal No. 2006-CA-001803-MR and Cross-Appeal No. 2006-CA-001827-MR are reversed and this cause is remanded with directions that the family court conduct an evidentiary hearing or trial and render independent findings of fact and conclusions of law as required by law.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
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