

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001124-MR

JEAN ANN BENDER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS F. PAISLEY, JUDGE, JUDGE
ACTION NO. 91-CI-02627

LARRY ALLEN BENDER

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: COMBS, EMBERTON AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE. Jean Ann Bender (Jean) appeals an order of the Fayette Circuit Court entered on March 20, 1998, denying her motion for post-dissolution distribution of a share of Larry Allen Bender's (Larry) 1997 employment bonus. We reverse and remand.

The facts of this case are relatively uncomplicated. Jean and Larry entered into a settlement agreement (the agreement), which was incorporated by reference into the final decree of divorce entered on June 15, 1992, that stipulated that the wife was to receive 40% of any bonus the husband received during the five years' period ending in June, 1997. Over the

next several years Larry became delinquent in this obligation, which eventually resulted in litigation initiated by Jean to collect her share under the agreement. Eventually, Larry paid Jean the amount owed for the period of June 15, 1992, through December 31, 1996. However, the obligation for the first six month's of 1997 remained in dispute.

Larry is one of two general partners in an architectural firm. He had substantial earnings in 1997 that included bonuses paid to him in September, October and December of 1997. Jean contends that as a partner in the firm, Larry controlled when and in what amounts his bonuses were paid. On February 17, 1998, Jean asked the trial court to make final distribution under the agreement. Jean sought the monies payable to her from January 1, 1997 through June 30, 1997, including a pro-rata share of the bonuses earned or attributable to Larry during the first six months of 1997. The trial court ordered Larry to pay Jean \$763.26 for her share of his excess earnings, under another clause of the agreement, from January 1, 1997 through June 30, 1997, but refused to award Jean any portion of Larry's bonuses paid during the latter part of 1997. The trial court denied Jean's motion to alter, amend or vacate on April 28, 1998. This appeal followed.

Initially, we must note that we will review the trial court's findings of fact for clear error. Kentucky Rule of Civil Procedure 52.02; Lawson v. Loid, Ky., 896 S.W.2d 1(1990). The gravamen of Jean's argument is that a portion of the bonuses paid to Larry in September, October and December of 1997 constitute

compensation that accrued during the first six months of the year. Jean contends she is entitled to receive 40% of the bonuses on a pro-rata basis. The trial court ruled that Jean had no legal entitlement to the bonuses since no bonuses had been paid to Larry as of June 30, 1997, the date the agreement terminated. We disagree.

Contracts entered into by divorcing parties are just as binding and enforceable as any other contract. KRS 403.180(5); John v. John, Ky. App., 893 S.W.2d 373(1995). Contract terms are strictly enforced unless found ambiguous. Mounds v. Roberts, Ky., 388 S.W.2d 517(1995). The portion of the agreement under judicial scrutiny in the present case reads as follow:

14. Additional Payment to Wife. As an additional property division, Husband agrees during the five years(5) following entry of the Decree of Dissolution herein, to pay Wife from his earnings the following sums:

...

(b) Forty percent(%)of any bonus or additional distribution payable to Husband from his employment...(emphasis added)

"Earnings" is defined by KRS 427.005 as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise and includes periodic payments to a pension or retirement program." (emphasis added).

Neither party disputes the fact that Jean would have been entitled to a portion of any bonus actually paid to Larry during the first six months of 1997. Thus, the sole issue before this Court is whether the bonus accrued incrementally during the course of 1997 or whether it was earned only when paid.

Logistically, if the bonuses accrued incrementally during the course of 1997, then a portion of the bonuses were "payable" to Larry for his first six months worth of work in 1997 and, pursuant to the agreement, Jean is entitled to her 40% share. If bonuses were earned only when paid, Jean would not be entitled to a 40% share because Larry received the bonuses during the latter six months of 1997.

We believe Larry's testimony at the February 2, 1998, hearing on this matter is dispositive of the issue. Larry stated unequivocally that the bonuses paid to him in 1997 were earned throughout the course of the entire year and not solely on the date paid:

- Q. When you get (sic) a bonus at the end of 1997, that bonus was for your whole year's work, correct? You don't get that for the last month's worth of work?
- A. It doesn't work like that. Those sums accumulate slowly over the period of the year.

Based upon this testimony, under paragraph 14(b) of the agreement, Jean was entitled to a 40% share of the bonuses received by Larry earned during the first six months of 1997. Failure of the trial court to pro rate these bonuses and award Jean her share for which she contracted and the agreement provided for was clear error in our opinion.

In addition, Jean argues that she is entitled to attorney's fees under paragraph 22 of the settlement agreement titled "Default." Although Jean raised this issue in her motion to require distribution on February 17, 1998, the trial court did

not rule on this issue in its May 20, 1998, order. Therefore, the issue is not properly before us at this time.

For the foregoing reasons, the opinion of the trial court is reversed and remanded for proceedings consistent with this opinion.

ALL CONCUR.

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