

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

GARY R. KINLEY,	:	
Plaintiff	:	
	:	
v.	:	No. 00-21,617
	:	
SHARON R. KINLEY,	:	
Defendant	:	

**OPINON and ORDER**

This opinion addresses Exceptions to the Master’s Report issued on March 17, 2003. At issue are two provisions of the parties’ Antenuptial Agreement, executed on April 15, 1992.

The first issue in dispute is the fate of the real estate located at R.D. #5, Box 157, Williamsport, Pennsylvania, which was owned by Husband at the time the Agreement was signed. The Agreement states that the items listed in Exhibits A and B are not subject to equitable distribution. One of the items listed on Exhibit A is the real estate. Seven months after the Agreement was signed, however, Husband deeded the property to Husband and Wife, as tenants of the entireties. Wife contends the property should now be subject to equitable distribution.

Wife has presented two arguments. First, she argued the contract is ambiguous as to what should happen now that the property is both names. She points to paragraph seven of the agreement, which states in part,

It is understood by and between the parties that except for those assets mentioned in this Agreement and listed on Exhibits A and B, that the Pennsylvania laws of equitable distribution shall apply to the assets on Exhibit C and any remaining property acquired during the course of the marriage by the parties, (jointly as tenants by the entireties.)

Wife argues that the phrase “any remaining property acquired during the course of the marriage by the parties, (jointly as tenants by the entireties)” is ambiguous, as it could refer to the real estate at issue, which Husband deeded to himself and Wife as tenants by the entireties. The court finds no ambiguity here. As the Master pointed out, the words “remaining property” make it absolutely clear that the property addressed in this passage is property other than that listed on Exhibits A and B. This, along with the Agreement’s clear exemption of the items on Exhibits A and B from equitable distribution, leaves no question that the real estate is not subject to equitable distribution.

The court therefore agrees with the Master on the ambiguity issue.<sup>1</sup> However, the Master did not address Wife’s other argument: that the conveyance was a result of an oral agreement to amend the contract. Wife is apparently maintaining the parties agreed to modify the contract such that the real estate would become marital property, subject to equitable distribution and in return, Wife would share with Husband the proceeds from one or more of the items which were hers under the Agreement.

Pennsylvania contract law is well settled that a written agreement [other than for the sale of goods] may be modified by a subsequent oral agreement, provided the modification agreement is based upon valid consideration and is proved by evidence which is clear, precise, and convincing. Pellegrine v. Luther, 169 A.2d 298, 299 (Pa. 1961); Somerset Community Hospital et al. v. Mitchell & Associates, Inc., et al., 685 A.2d 141, 146 (Pa. Super. 1996).

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<sup>1</sup> We do not agree, however, with the Master’s apparent belief that if the provision is ambiguous, it is null and void. When a court finds a contract provision to be ambiguous, parol evidence is then permitted to help the court ascertain the parties’ intentions at the time of contracting.

Since defendant's assertion of oral modification was not addressed by the Master, we will schedule a hearing on the alleged oral modification, which will be held before this court on June 16, 2003 at 9:00 a.m. The court urges counsel to be prepared to argue the relevant contract law at that proceeding.

The remaining issue is whether Wife's inherited assets are subject to equitable distribution. Paragraph seven of the contract states that the assets listed on Exhibit C shall be subject to equitable distribution. Exhibit C is entitled: "Pre-Marital Assets of Wife to Become Marital Property." Number seven on the list of assets states, "All inherited assets." Therefore, the clear intention of the parties was that all of Wife's pre-marital inherited assets would become marital property and therefore subject to equitable distribution. Paragraph seven states: "As to property acquired by the Husband [of] Wife individually by gift or acquired in the name of the Husband or Wife alone, including any appreciation of same, each party agrees that there shall be no property settlement or division of property between them, either by equitable distribution or any other form of property rights with respect to such property belonging to the Husband or Wife alone." This passage covers inheritances, which coincides with Pennsylvania law on inheritances as it pertains to equitable distribution. 23 Pa.C.S.A. §3501(a)(3). Therefore, any assets inherited by Wife during the marriage or after the marriage are not subject to equitable distribution.

**ORDER**

AND NOW, this \_\_\_\_\_ day of April, 2003, for the reasons stated in the foregoing opinion, the Defendant's Exceptions #1, #3 and #4 are granted. All remaining Exceptions filed by the Defendant or the Plaintiff are dismissed.

A hearing shall be held on June 6, 2003 at 9:00 a.m., in Courtroom #1 to determine the issue of whether the Antenuptial Agreement was orally modified by the parties.

BY THE COURT,

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Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Clinton W. Smith  
Janice Yaw, Esq.  
Bradley Hillman, Esq.  
Gerald Seevers, Esq.  
Gary Weber, Esq.