

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

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

OPINION and ORDER

The sole issue before the court is whether Gary and Sharon Kinley orally modified their pre-nuptial agreement regarding the real estate located at R.D. #5, Box 157, Williamsport, Pennsylvania. The real estate was owned by Mr. Kinley at the time the Agreement was signed. The Agreement clearly states that upon divorce, the property would not be subject to equitable distribution. Seven months after the Agreement was signed, however, Mr. Kinley deeded the property to himself and Mrs. Kinley, as tenants by the entireties.

Mrs. Kinley contends the property should now be subject to equitable distribution because the parties orally modified the pre-nuptial agreement. The court must reject her argument because she presented no evidence establishing that the parties orally agreed to modify the pre-nuptial agreement.

DISCUSSION

Pre-nuptial agreements are evaluated under traditional contract law. This approach is founded upon the long-recognized principle that individuals have a right to enter into such agreements and arrange their affairs as they see fit. *See Stoner v. Stoner*, 819 A.2d 529 (Pa. 2003); *Simeone v. Simeone*, 581 A.2d 162 (Pa. 1990); *Cercaria v. Cercaria*, 592 A.2d 64 (Pa. Super. 1991). Therefore, the party challenging the agreement has the burden of showing by clear and convincing evidence that it is invalid.

In the case before this court, Mrs. Kinley is not arguing the Agreement is invalid. Instead, she maintains the Agreement was orally modified by the parties. A contract (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. Pellegrene v. Luther, 169 A.2d 298 (Pa. 1961); Somerset Community Hospital et al. v. Mitchell & Associates, Inc., et al., 685 A.2d 141 (Pa. Super. 1966).

In the case at hand, there is no evidence the parties orally modified the pre-nuptial agreement. In fact, Mrs. Kinley herself stated she never discussed with Mr. Kinley the impact the conveyance of the real estate would have on the pre-nuptial agreement. Therefore, according to Mrs. Kinley's own testimony, there was no explicit agreement to revoke the pre-nuptial agreement. The court also notes that interestingly enough, Mrs. Kinley never even discussed it with Jim Casale, the attorney who drafted both the pre-nuptial agreement and the deed of conveyance. Instead, Mrs. Kinley simply assumed the pre-nuptial agreement would be invalid; unfortunately for her, that assumption does not render it invalid.

Mrs. Kinley appears to argue that the mere action of conveying the property into tenants by the entirety, along with the work and money she put into the property, somehow proves the Agreement was orally modified. The parties may conduct themselves however they please during the marriage, and that is ordinarily no business of the courts. However, if they separate and divorce, a pre-nuptial agreement will still be valid unless the contracting parties have clearly agreed to modify that agreement.

Mrs. Kinley contends Mr. Kinley deeded the property to her because he wanted it to be "her home." Even if that were true, it does not amount to an oral modification of the pre-nuptial agreement. Mr. Kinley's testimony showed that in deeding the property to Mrs. Kinley, Mr. Kinley had absolutely no intention of invalidating the Agreement. In fact, the court finds that the primary reason for the conveyance was in

order to obtain a much lower interest rate on the existing mortgage. Mr. Kinley's bad credit, caused by his second wife, prevented him from obtaining a good rate. By including Mrs. Kinley on the deed, the rate was reduced from 10.5% to 7.12%. This benefited Mrs. Kinley as well as Mr. Kinley. Moreover, the conveyance also protected the property from Mr. Kinley's creditors¹.

Mrs. Kinley also presented no evidence of any consideration for the supposed oral modification. She maintains she cashed in various pre-marital assets and put all of the money into maintaining and improving the home. Even if the court were to accept this testimony, it would not constitute consideration, for under Exhibit C of the Agreement, those pre-marital assets became marital property upon marriage.

This marriage, like many marriages, started out well. The parties were getting along fine. Mrs. Kinley was taking care of the home, and Mr. Kinley was earning the money. During this happy time, Mr. Kinley deeded the home to the couple by tenants by the entireties as a marital accommodation, which worked to the benefit of both parties. However, that action alone did not render the Agreement invalid. Pre-nuptial agreements are meant to provide for disposition of the assets when the parties are *not* getting along. This court would be remiss if we were to permit pre-nuptial agreements to be invalidated by actions the parties took while things were going well, for that would undermine the very purpose of pre-nuptial agreements, and would render them virtually useless. If the parties want to vacate their agreement, they are free to do so by obtaining a court order or by orally agreeing to change their agreement. However, any assertion of oral modification will be carefully scrutinized by the courts. The evidence of such a modification must be clear, precise, and convincing.

Mr. Kinley and Mrs. Kinley had both been married before. This was Mr. Kinley's third marriage and Mrs. Kinley's fourth marriage. Both of them knew, when

¹ Actually, the creditors of Mr. Kinley's second wife.

they signed the Agreement, that however much in love they were at that time, there was no guarantee their marriage would be successful. Both parties wanted to preserve their pre-marital real estate and other assets, should their marriage dissolve. Mr. Kinley was especially concerned because he had twice been forced to refinance his home, and he had lost a great deal of equity in order to pay off his ex-spouses. Mrs. Kinley also benefited from the pre-nuptial agreement, for she owned a residence worth \$50,000 which was not subject to a mortgage.² Both parties had a right to enter into the pre-nuptial agreement and to rely on it remaining valid in the event of a divorce. It would be a violation of the parties' right to contract if the court were to invalidate it based upon Mr. Kinley's decision to deed the property to himself and Mrs. Kinley by tenants by the entireties. If the parties had wanted to invalidate the agreement at the time of the conveyance they could have easily done so, for they used the same attorney to draw up both documents. They did not revoke the Agreement legally, nor did they modify it orally, and the court will not invalidate it now. Therefore, we hold that the real estate is not subject to equitable distribution.

² At the time the Agreement was signed, Mr. Kinley's real estate was worth \$70,000 and was subject to a \$50,000 mortgage.

ORDER

AND NOW, this _____ day of June, 2003, for the reasons stated in the foregoing opinion, all of Mrs. Kinley's Exceptions to the Master's Report of March 18, 2003 are dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

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