

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

C.B.R.,	:	IN DIVORCE
Plaintiff	:	
	:	
vs.	:	07-20,060
	:	
C.W.R.,	:	
Defendant	:	

OPINION and ORDER

This matter comes before the court on both parties' petitions to enforce a Marital Settlement Agreement executed by both parties on February 14, 2007. In her petition, Wife requests the court to enforce certain provisions of the agreement, and the court issued an order on March 28, 2008 ordering Husband to permit Wife to pick up children's books and Barbie dolls, to pay co-pay costs related to medical treatment and prescriptions, to submit counseling bills to his insurance company, to waive his interest in Wife's pension plan, and to permit Wife to have visitation with the parties' pet dogs.

Husband has also filed a petition to enforce the marital settlement agreement, asking that Wife be ordered to execute any and all documents necessary for the parties to secure a divorce decree. This is in accordance with numbered paragraph 1 of the Agreement, which states the parties intend to secure a "mutual consent, no-fault divorce pursuant to the terms of Section 3301(c) of the Divorce Code of 1990."¹ The Agreement further states:

Husband and Wife covenant and agree that they will forthwith (and within at least ten [10] days after demand therefore) execute any and all written instruments, assignments, releases, satisfactions, deeds, notes, or such other writings as may be necessary or desirable for the proper effectuation of this Agreement, and as their respective counsel shall

¹ This section permits a divorce decree to be entered where ninety days have elapsed from the filing of the divorce complaint and both parties have consented to the divorce.

mutually agree should be so executed in order to carry out fully and effectively the terms of this Agreement.

Wife argues the Agreement is ambiguous on this issue. The court rejects this argument, as we find the Agreement to be unambiguous; we therefore will not consider any parole evidence on this issue.² The parties have clearly stated their intention to secure a mutual consent divorce, which necessarily includes each party filing a consent to divorce.

Wife next argues the Agreement does not state exactly when she must file a consent, and therefore she has up to two years after separation to do so. This argument is untenable, as it would render the agreement to obtain a mutual consent divorce meaningless. Moreover, as stated above, the parties have included a catch-all paragraph, number 33, stating that all documents necessary to carry out the agreement shall be executed within ten days of demand by the other party.

Wife's most potent argument is that she cannot be ordered to execute a consent because it is against public policy. In support of this argument, she cites Brems v. Brems, 21 Pa. D. & C.3d 646 (1982). In the Brems case, which is mostly on point, the trial court declined to order a wife to file a consent, stating, "The agreement for a consensual divorce is not enforceable as a matter of law or in equity and sound policy reasons exist not to direct enforcement." Id. at 651. The court further stated,

We do not believe the court is empowered or that it would be good policy to direct a party to have consented by virtue of an agreement to do so in the future. Because the status of marriage is of distinctly personal dimensions, a person has an unqualified right to change his or her mind and to refuse to consent to be divorced, at least, as here, where the consent, though signed has not been delivered or filed.

Id. at 650.

² When the words of such an agreement are "clear and unambiguous, the intent of the parties is to be discovered from the express language of the agreement." Raiken v. Mellon, 582 A.2d 11, 13 (Pa. Super. 1990).

We respectfully disagree. In ordering Wife to execute a consent, we are merely requiring her to follow through on a commitment she already made to obtain a consensual divorce. She made this commitment freely and voluntarily when she executed the Agreement.

Wife has requested the court to order Husband to execute a document relinquishing his interest in Wife's pension, in accordance with the Agreement, and the court has done so. Yet Wife claims the court has no power to order her to execute an affidavit of consent, also in accordance with the Agreement. It is hypocritical of Wife to request this court to enforce certain provisions that she desires, while at the same time claiming the provision regarding a consensual divorce is unenforceable. To selectively enforce the agreement would be unfair to Husband, who no doubt made certain financial concessions in order to obtain a no-fault divorce.³

This is not a case where Wife truly believes the marriage can be saved. Her only reason for refusing to file a consent apparently is to retain Husband's health insurance benefits as long as she can.

Neither is this a case where Wife was forced or tricked into executing the agreement. In fact, the Agreement states that Husband was not represented by counsel, and that Wife's counsel fully explained to her the provisions of the Agreement and their legal effect. Moreover, Wife's counsel drafted the Agreement.

In light of all these facts, the court fails to identify any public policy which would prevent the enforcement of the no-fault divorce provision of the Agreement. In fact, we note that 23 Pa.C.S.A. §3102(2) states it is the policy of the Commonwealth to "Encourage and effect reconciliation *and settlement of differences* between spouses, especially where children are involved." (Emphasis added.) We also note that "The determination of marital property rights through prenuptial, post-nuptial and settlement

³ Husband is engaged to be married.

agreements has long been permitted, and even encouraged.” Sabad v. Fessenden, 825 A.2d 682, 686 (Pa. Super. 2003), citing Laudig v. Laudig, 624 A.2d 651, 653 (Pa. Super. 1993). Generally, the parties are bound by their agreements, absent fraud, misrepresentation or duress. Simeone v. Simeone, 581 A.2d 162, 165 (Pa. 1990).

And finally, we believe the court has the equitable power to require Wife to execute an affidavit of consent in these circumstances. Under 23 Pa.C.S.A. §3323(f), the court has “full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require”

For these reasons, we believe the Agreement calling for a consensual divorce is enforceable, and this court would be remiss in granting enforcement to Wife of the portions she desires while permitting her to renege on the provision Husband desires.

ORDER

AND NOW, this _____ day of April, 2008, for the reasons stated in the foregoing opinion, Husband's petition for enforcement of a marital settlement agreement is granted and Wife is ordered and directed to execute an affidavit of consent, along with any other documents necessary for the parties to secure a divorce decree, within ten days of the date of this order.

BY THE COURT,

Richard A. Gray, J.

cc: Janice Yaw, Esq.
Joel Wiest, Esq.
5 North Second St.
Sunbury, PA 17801
Gary Weber, Esq.