

PR,	Plaintiff	: IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA : : :
vs.		: NO. 09-21,583 : :
SR,	Defendant	: CIVIL ACTION - DIVORCE : :

OPINION & ORDER

AND NOW, this 30th Day of June, 2010, after hearing argument on June 21, 2010 regarding Wife’s Motion to Set Aside Marriage Settlement Agreement filed June 14, 2010, Husband’s Petition for Contempt of Marriage Settlement Agreement filed May 7, 2010, and Wife’s New Matter, contained in her Answer to Husband’s Petition for Contempt, filed June 14, 2010, the Court hereby DENIES Wife’s Motion to Set Aside the Marriage Settlement Agreement, GRANTS Husband’s Petition for Contempt in part, and GRANTS Wife’s New Matter in part.

The parties were divorced by this Court on April 7, 2010. The Divorce Decree incorporated a stipulated Marriage Settlement Agreement (hereinafter “Agreement”) that the parties signed on December 23, 2009. Pursuant to the Agreement, Wife waived any interest in the marital residence and three vehicles while Husband agreed to provide \$1,200 per month in alimony for ten-years. Husband, through his attorney Matthew Ziegler, Esquire, contends that Wife has failed to remove herself from the marital residence, resulting in contempt of the Agreement. Wife, through her attorney Patricia Shipman, Esquire, asserts that the Agreement is invalid and unenforceable. Additionally, Wife argues that even if the Agreement is valid, Husband has unclean hands and is in contempt as a result of his failure to make the provided

alimony payments.

I. The Agreement Is Valid and Enforceable

Wife requests the Agreement be vacated because Husband failed to fully disclose all of his assets. Additionally, Wife argues that the Agreement is grossly unfair and should be considered unconscionable.

A. Failure to fully Disclose Assets

Settlement agreements between Husband and Wife are governed by the law of contracts. Lang v. Meske, 850 A.2d 737, 739 (Pa. Super. Ct. 2004). As such, rescission of a contract will only occur if the parties have failed to make a full and fair disclosure of their assets prior to entering the agreement, or if any common law ground for invalidating the contract exists – such as fraud, misrepresentation, or duress. Porreco v. Porreco, 811 A.2d 566, 570 (Pa. 2002). If the parties stipulate in their agreement that full disclosure of financial assets has been provided, then a presumption of full disclosure arises. Simeone v. Simeone, 581 A.2d 162, 167 (Pa. 1990). As a result, the burden of providing clear and convincing evidence shifts to the petitioner when attempting to invalidate the agreement. Id.

In the present matter, the Agreement signed by the parties references a full disclosure:

12. DISCLOSURE OF ASSETS:

The provision of this Agreement and their legal effect are fully understood by each party to this Agreement, and such party acknowledges that the Agreement is fair and equitable, that it is being entered into voluntarily, and that it is not the result of any duress and undue influence. Husband and Wife each represent and warrant to the other that he or she has made a full disclosure to the other of all assets of any nature whatsoever in which such party has an interest, of the sources and amount of the income of every type whatsoever, and of all other facts relating to the subject matter of this Agreement.

Marriage Settlement Agreement, December 23, 2009, pg. 7. Thus, a presumption arises that

Husband and Wife made the requisite disclosure of their assets prior to entering into the Agreement.

As the petitioner seeking to set aside the Agreement, Wife must rebut this presumption by clear and convincing evidence. Simeone, 581 A.2d at 167. Wife's suspicion of undisclosed assets is grounded in the parties having retained separate financial accounts throughout their marriage. Wife's lone support for her belief comes from statements she overheard Husband make. Specifically, Wife testified that she heard the terms "CD," "IRA" and "CAFE 125" all referenced by Husband during their marriage, but failed to see those assets represented in the Agreement.

On cross-examination, Husband testified that he did possess a CD (certificate of deposit) several years ago, but the CD was for the exclusive purpose of the Christmas holiday that particular year, when Husband and Wife were still married. Since then, Husband has not reinvested in a CD.

Husband stated that the only other retirement account was through a previous employer. However, that account was completely cashed out in order to provide the down payment on the marital residence. Husband further denied having either a defined benefit plan or individual retirement account.

As to the CAFE 125 that Wife alleges was deducted from Husband's paycheck, Husband presented a paystub to Wife during cross-examination. Wife acknowledged there was no CAFE 125 deduction, but recalled seeing several versions of Husband's paystubs. Wife testified that this particular payroll stub was not one with which she was familiar and could provide no additional information about what CAFE 125 may be.

Having heard all of the evidence, this Court is unconvinced by Wife's argument and

finds that Wife has failed to meet the requisite burden of proof in order to vacate the Agreement.

Wife is required to provide clear and convincing evidence that demonstrates Husband had undisclosed assets at the time they entered into their agreement. Simeone, 581 A.2d at 167. However, Wife has presented only accusations supported by a recollection of previous statements made by Husband. Wife's allegations are based on Husband's indirect references to financial instruments and assets. Wife failed to provide any material evidence – such as financial statements, personal financial logs, or even prior conversations directly with Husband – tending to prove that Husband actually possessed undisclosed assets. This, alone, is not sufficient for the petitioner to overcome the presumption of a valid contract. Absent additional evidence supporting her conclusory assertions, Wife cannot succeed on her motion to set aside the marital agreement based upon husband's failure to disclose assets.

B. Unconscionability

Wife contends that the Agreement is grossly unfair and should be invalidated. This claim also fails to carry the day in setting aside the Agreement.

Wife is originally from Cameron, Africa and argues she did not fully understand the American legal system or her rights when she entered into the Agreement. Wife testified that before signing the Agreement she received a pile of papers related to the divorce proceedings. Wife further testified that the Agreement could have been one of the papers she received, but she failed to read it or obtain counsel to help her with the proceedings. Wife believed the Agreement would allow her to remain married to Husband and live in the marital residence while also collect alimony payments. Wife testified that when she refused to sign the Agreement, Husband stated he would not pay for her plane ticket to Africa to visit her family

nor provide her with any alimony. Husband admitted this allegation insofar as it concerned him paying alimony until she signed the Agreement.

Wife also testified that when she was asked to sign the Agreement the first time, she refused. At a later date, Husband and Wife went to sign the agreement at Husband's attorney's office. Wife stated that she signed her name that day without reading the terms. Only after signing the Agreement did Wife read it and obtain an attorney. By not reading and fully understanding the terms of the Agreement nor having an attorney present at the time, Wife contends that the Agreement should be rescinded.

In Pennsylvania, in order for a court to render a contract unconscionable, the court must find that the terms are unreasonably favorable to the drafter of the agreement and that there was no meaningful choice provided to the other party in regards to accepting the provisions. Colonna v. Colonna, 791 A.2d 353, 357 (Pa. Super. Ct. 2001). However, a court will not "inquire into the reasonableness of the bargain, or the parties' understanding of the rights they were relinquishing" as it would interfere with an individuals rights to freely contract. Stoner v. Stoner, 819 A.2d 529, 533 (Pa. 2003).

Wife's contention that she failed to read the Agreement before signing it does not render it unenforceable. Parties are still bound by the terms of an agreement even if they fail to understand what they are entering into. Simeone, 581 A.2d at 166. Even so, this Court believes that Wife had ample opportunity to read the terms of the Agreement before signing it. By Wife's own admission, she received a copy of the Agreement in advance of signing it. Wife's failure to utilize that time cannot allow her to now evade the terms of an agreement she voluntarily entered into. Moreover, Wife's failure to consult with an attorney prior to signing the Agreement does nothing to invalidate it. There is no requirement that parties entering a

marital agreement must obtain an attorney. Id.

Finally, regarding unconscionability, this Court does not believe the parties were of grossly disproportionate bargaining power or that Wife's only option was to sign the Agreement.

Husband, through his attorney, drafted the Agreement that both parties signed. The Agreement provides for Husband to receive most of the valuable tangible assets – the marital residence and three vehicles. However, Husband is also assuming the debts that come with those assets, including over one-hundred thousand dollars in mortgages on the marital residence alone. From the Agreement, Wife receives several items of marital property, \$1,200 in monthly alimony for ten-years, and avoids any financial liability for the marital residence and vehicles. While the Agreement may amount to less than an equal division of assets, this Court will not evaluate the reasonableness of any bargain between the parties. Stoner, 819 A.2d at 533. In fact, the Court believes there is a high probability that Wife benefited from the agreement more than Husband.

The assets were fully disclosed by both parties, paving the way for an enforceable contract to emerge. The Agreement is not disproportionately favorable to the Husband as drafter of the Agreement, and thus, cannot be considered grossly unfair and unconscionable to enforce.

For the aforementioned reasons, this Court finds that the Agreement is valid and enforceable. Wife's Motion to Set Aside the Marital Agreement is hereby DENIED.

**II. Husband's Contempt Petition is GRANTED in part and
Wife's New Matter is GRANTED in part**

Since the Court has determined that the Agreement is binding, the parties are required

to perform their obligations under the Agreement. Husband argues that Wife is in contempt of the Agreement as she has not removed herself from the residence. The Agreement states:

3. REAL ESTATE:

Wife hereby waives any right or claim she may have in the real estate located at 1210 Cherry Street, Williamsport, Lycoming County, Pennsylvania. Said real estate shall remain the sole property of Husband. Wife hereby agrees to cooperate in any required transferring said real estate to Husband, within sixty (60) days of execution of this Agreement.

Marriage Settlement Agreement, December 23, 2009, pg. 4. Husband, through counsel, sent a follow-up letter to Wife on April 12, 2010 requesting that Wife vacate the residence within fourteen days. Husband's Petition for Contempt, Exhibit C, May 4, 2010. The letter further advised Wife that contempt proceedings would be brought against her if she failure to do so.

Id.

The Court agrees with Husband that Wife is in contempt. The Agreement clearly states that Wife relinquishes any right to the marital residence and is to cooperate with Husband's requests to transfer the real estate. As such, Wife has no legal claim to the marital residence on Cherry Street.

Wife, however, contends in her New Matter that she is unable to vacate the residence because she has no source of income other than the alimony payments from Husband. Moreover, Husband has failed to pay all of the stipulated alimony payments since signing the Agreement. This situation has rendered it impossible for Wife to vacate the marital residence.

Paragraph 7 of the Agreement requires that Husband begin paying \$1,200 per month in alimony on December 23, 2009 – the date the Agreement was signed. Marriage Settlement Agreement, December 23, 2009, pg. 5. At present, Husband is responsible for six (6) months of alimony payments to Wife, totaling \$7,200. However, Husband has presented the Court

with evidence of only sporadic payments to Wife totaling \$1,019. Husband argues that the alimony payment owed to Wife each month should be reduced by the rent owed to him at \$1,000 a month. The Court finds no basis in Husband's assessment of rent against Wife.

Husband testified that his first alimony payment to Wife in December was her plane ticket to Africa, which he paid for. Husband stated that he placed an airline reservation ticket into Wife's Christmas stocking, but told her she wouldn't get the money – the first alimony payment – for the ticket until she signed the Agreement.

Wife disputes this recount and argues the ticket was a gift from Husband and not an alimony payment. Wife stated that Husband handed her the reservation ticket and said “ho-ho-ho.” Wife further testified that Husband then provided her with cash in order to pay for the cost of the flight.

While Husband contends that Wife should have known he did not have the money for such an expensive gift, the Court believes that Husband did not properly represent the ticket as an alimony payment. The Court is unconvinced that Husband ever explicitly stated the ticket was Wife's first alimony payment. By placing the reservation ticket into her stocking, it is clear to this Court that Husband intended the ticket to be a gift to Wife and delivered it to her. Furthermore, Husband never offered Wife the first alimony payment in cash, but rather assumed she wanted a ticket to Africa in lieu of money. Husband went ahead and booked an airline reservation ticket without first presenting that option to Wife. Such an assumption was improper on the part of Husband. Therefore, the ticket does not constitute a credited alimony payment.

In sum, the Court finds that Wife is in contempt of the Agreement by continuing to reside in the residence. Additionally, the Court finds that Husband is in contempt of the

Agreement by failing to fulfill his alimony obligations.

As a result of both parties being in contempt of the Agreement, the Court GRANTS Husband's Contempt Petition in part and GRANTS Wife's New Matter in part. As both parties are in contempt of the Agreement, the Court will not enter any sanctions against either party.

Accordingly, the Court DIRECTS the parties to adhere to the following schedule. As of June 23, 2010, Husband is in arrears on alimony by \$6,181 (\$7,200 - \$1,019). Husband shall pay \$3,090.50 to Wife within twenty-one (21) days of this Order. Upon receipt of payment, Wife shall remove herself from the marital residence within seven (7) days. When Wife vacates the marital residence, Husband shall pay Wife the remainder of the outstanding alimony owed – \$3,090.50 – within fourteen (14) days of Wife removing herself from the marital residence. Such action shall not supersede any of Husband's required monthly alimony payments under the Agreement. Husband shall make the full July alimony payment no later than July 23, 2010 and shall continue to make the full alimony payment by the 23rd of each month thereafter.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Patricia Shipman, Esquire
Matthew Ziegler, Esquire
Family Court
Jonathan DeWald, Judge McCoy's Law Clerk
Gary Weber, Esquire