

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

JS,		:	NO. 97-21,405
	Plaintiff	:	
		:	
	vs.	:	
		:	
RS,		:	
	Defendant	:	IN DIVORCE

OPINION & ORDER

AND NOW, this 16th Day of August, 2011, this order is entered after a hearing regarding Wife’s Petition for Contempt and Special Relief filed July 20, 2011, and Husband’s Petition to Terminate or Modify Post Nuptial Agreement filed July 25, 2011. At the hearing, held on August 10, 2011, JS (Wife) was present and represented by Melody Protasio, Esquire; RS (Husband) was present and represented by Matthew Zeigler, Esquire.

Background

The parties were divorced on October 30, 1998; on June 22, 2001 the parties entered into a Post Nuptial Agreement (hereinafter “Agreement”). At the time the Agreement was entered into, Wife’s interests were represented by William J. Miele, Esquire; after being given an opportunity to seek counsel, Husband chose to proceed unrepresented. The Agreement provided that Husband was to pay wife child support in the amount of \$432.00 per month and alimony in the amount of \$591.00 per month. In addition, Husband agreed to pay Wife’s car payments in the amount of \$334.00 a month until the debt was paid in full and then subsequently waive all interest to the vehicle.

Husband was also to pay Wife's insurance premium of \$140.80 a month and to name Wife as the irrevocable beneficiary on his Federal Employee's Group Life Insurance. In exchange, Wife agreed not to seek increased alimony or child support until March 31, 2002 or until the car was paid in full. She further waived and relinquished any rights to Husband's pension and thrift savings through the United States Postal Service and in his retirement plan through Globe Insurance. The Agreement contained a provision in which in case of breach the injured party had the right to sue for damages for breach, including attorney's fees and or other legal remedies available to them. In addition, the Agreement was modifiable only written agreement signed by both parties.

On May 16, 2002, the parties signed an Amended Post Nuptial Agreement. At the time of the Amended Agreement Husband had paid Wife's car payment in full; Husband agreed to pay increased child support and alimony in the amount of \$550.36 and \$709.26 respectively. All other terms of the June 28, 2001 Post Nuptial Agreement remained intact. Again, when the parties entered into this Amended Agreement, Wife was represented by William J. Miele, Esquire and Husband was unrepresented.

Husband's Petition to Terminate or Modify Post Nuptial Agreement

Husband requests the Agreement be vacated or modified due to the fact that because he was not represented at the time he entered into the contract he did not fully understand the ramifications of what he was signing. Husband further argues that the Agreement is unconscionable because through alimony Wife receives approximately ninety-percent of Husband's disability pay.

In response to Husband's argument that he did not fully understand the ramifications of what he was signing, the Agreement states and the Court finds that Husband was given an opportunity to seek counsel and chose not to. Husband, through his counsel, argued that he thought that the Agreement was modifiable and therefore should now be modified. However, the Agreement is clear on the ability and circumstance in which modification can be accomplished. The lack of understanding contract terms is not a reason for the Court to intervene into a contract; parties are bound by the terms of the contract even if they fail to understand what they are entering into. *Simeone v. Simeone*, 581 A.2d 162, 166 (Pa. 1999).

In the absence of a specific provision to the contrary appearing in the agreement, a provision regarding the disposition of existing property rights and interests between the parties, alimony, alimony pendente lite, counsel fees or expenses shall not be subject to modification by the court.

23 Pa. C.S. § 3105 (c). The Agreement cannot be modified by the Court based on the changed circumstances of the parties; the Agreement has the force and effect of a written contract. *Nessa v. Nessa*, 339 Pa. Super. 59, 581 A.2d 674 (1990). The Court cannot intervene on a legally binding contract and Husband cannot be relieved of his contractual obligations unless he has a valid contract defense such as duress, illegality, fraud or unconscionability. *Metzgar v. Star Pontiac*, 75 Pa. D. & C. 4th 114, 199 (quoting *McNulty v. H & R Block*, 843 A.2d 1267, 1272 (Pa. Super. 2004)).

Husband's second argument is that Wife currently receives approximately ninety-percent of Husband's monthly disability income and based on that fact alone the Agreement is unconscionable. To establish unconscionability there must be an absence of meaningful choice in accepting the terms of the contract and the provision or

provisions being challenged must unreasonably favor the other party. *Todd Heller, Inc. v. UPS*, 754 A.2d 689, 700-01 (Pa. Super. 2000). In other words, in regards to an unconscionable contract the terms unreasonably favor the drafter of the agreement and the opposing party really has no other choice but to accept those terms. *Colonna v. Colonna*, 791 A.2d 353, 357 (Pa. Super. 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 the right to freely contract. *Stoner v. Stoner*, 819 A.2d 529, 533 (Pa. 2003).

Looking at the clause of the Amended Agreement in isolation “Ex-Husband agrees to pay Ex-Wife alimony of \$709.26 per month instead of the previous payment of \$591.00 per month” the term does favor the drafter and appears to be one-sided. However, the Amended Agreement provides that all other terms of the original Agreement remain in full force. In the original Agreement Wife waived her rights to Husband’s pension and thrift savings through the United States Postal Service and in his retirement plan through Globe Insurance which arguably have monetary value which Wife would have been entitled to a portion of through equitable distribution of the marital estate¹. Furthermore, there was no testimony presented by Husband to the effect that he felt like he was obligated to sign the Agreement or that he lacked meaningful choice. The Court finds that Husband did not meet the test for unconscionability. Therefore, Husband is bound by the terms of the Agreement and the Court is without jurisdiction to

¹ During the hearing counsel for Wife argued that the Agreement was a give and take arrangement and that Wife had in fact waived rights to Husband’s pension however there was no mention of the monetary value of the assets waived.

modify or terminate said Agreement. Husband's Petition to Terminate or Modify Post Nuptial Agreement is hereby DENIED.

Wife's Petition for Contempt and Special Relief

Wife filed a Petition for Contempt based on Husband's failure to pay her monthly insurance premium. As previously stated, pursuant to the Agreement Husband was to pay Wife's insurance premium of \$140.80 a month and to name Wife as the irrevocable beneficiary on his Federal Employee's Group Life Insurance. In open court, Husband testified to the fact that Wife is not a beneficiary on his life insurance policy and that he took her name off the policy sometime during the marriage. Based on the testimony of Husband this Court finds Husband has never been in compliance with that clause in the Agreement. Husband further testified that he stopped paying the monthly insurance premium sometime in 2006.

Husband's explanation for why he has failed to make the required premium payments is that he simply cannot afford to do so. Husband testified as to his monthly income; he receives \$866.00 from his pension, and \$1,461 from his disability. Husband further testified that after paying alimony and rent, which includes utilities and his share of the of monthly food bill, he has approximately \$600 remaining. The remaining \$600 is then used to pay \$16.25 for his life insurance premium and the minimum required payment of \$80 for his Lowe's credit card; that leaves a balance of \$503 of discretionary income per month for Husband. This Court finds that Husband has the means to make the monthly payment on Wife's insurance policy. Despite Husband not making the

health insurance premium payment since 2006, Wife has only requested payment from March 1, 2011, forward. The cost of Wife's premium is \$131.78 per month.

Therefore, Wife's Petition for Contempt and Special Relief is hereby GRANTED. It is hereby ORDERED and DIRECTED that within 48 hours of receipt of this Order, Husband shall contact his Federal Employees Group Life Insurance provider and change the beneficiary of his policy to JS, 100% beneficiary. Husband shall provide written proof to Wife that she is the beneficiary. Commencing September 1, 2011, and on the first of each month thereafter, Husband shall pay to Wife the monthly amount of her insurance premium which is currently \$131.78 per month. Additionally, Husband owes from March, 2011 through August, 2011 for the insurance premium, in the total amount of \$790.68. Commencing September 1, 2011, Husband shall pay an additional \$65.89 per month for twelve months in order to pay off the amount owed.

BY THE COURT,

Joy Reynolds McCoy, Judge