

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CLH	,	:	NO. 08 – 20,680
	Plaintiff	:	
		:	CIVIL ACTION - LAW
vs.		:	IN DIVORCE
		:	
LLH	,	:	Motion to Strike
	Defendant	:	Marital Property Settlement Agreement

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Strike Marital Property Settlement Agreement, filed May 13, 2011. A hearing was held August 29, 2011.

Defendant seeks to have declared void the marital property settlement agreement entered by the parties on May 6, 2009, which disproportionately favors Plaintiff, on the basis of fraud in the inducement, specifically alleging that Plaintiff significantly misrepresented the state of her health. Defendant testified that during the later years of their marriage Plaintiff, who is diabetic, indicated to him that her kidneys and liver were failing, and that at separation in March 2008, Plaintiff showed marked weakness and seemed to have become more frail and apathetic. He testified that she left Pennsylvania within days of separation and the one or two times he spoke with her on the phone after separation but before the agreement was signed, Plaintiff still sounded weak. According to Defendant, after the agreement was signed, Plaintiff called him and said she was taking some classes with the hope of returning to work, and that she was looking forward to living a long time; Defendant testified that it seemed that nothing was wrong with her at that time. Defendant admitted that he has had no contact with Plaintiff since 2008 and that he does not know the current state of her health.

Defendant argues that he signed the agreement because he didn't think Plaintiff would live longer than a couple years. He now contends that Plaintiff misrepresented the state of her health, apparently asserting that she was never as ill as he thought she was but that she led him to believe that in order to induce him to sign the agreement.

In order to void a contract due to a fraudulent misrepresentation, the party alleging fraud must prove, by clear and convincing evidence: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) resulting injury proximately caused by the reliance.

Porreco v. Porreco, 811 A.2d 566, 570 (Pa. Super. 2002). In the instant case, the Court finds the evidence woefully short of “clear and convincing”. Defendant has not shown that Plaintiff intentionally misled him about the state of her health. Indeed, he has not even shown that Plaintiff’s health is not what he believed it to be, but, rather, only that she has not yet died. His impression from a telephone call two years ago, that “nothing was wrong with her anymore”, does not support his contention that her health has improved, let alone that she misled him about it to begin with. Therefore, having failed to prove fraud in the inducement, Defendant’s motion to void the parties’ agreement will be denied.

**ORDER**

AND NOW, this 7<sup>th</sup> day of September 2011, for the foregoing reasons, Defendant’s Motion to Strike Marital Settlement Agreement is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Rebecca Reinhardt, Esq.  
Lori Rexroth, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson