

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

MS,	Plaintiff	:	NO. 10-20,828
		:	
		:	
vs.		:	
		:	
TS,	Defendant	:	IN DIVORCE

OPINION & ORDER

AND NOW, this 15th Day of November, 2011, this order is entered after a in chambers argument regarding Wife’s Petition to Interpret Agreement filed October 21, 2011. Present in chambers for the argument held on November 10, 2011, was counsel for Wife Melody L. Protasio, Esquire and counsel for Husband Bradley Hillman, Esquire.

Background

The parties were divorced on October 13, 2010; the Divorce Decree incorporated by reference the Property Settlement Agreement (hereinafter “Agreement”) dated July 1, 2010. At the time the Agreement was entered into, Husband’s interests were represented by Patricia L. Bowman, Esquire; after being given an opportunity to seek counsel, Wife chose to proceed unrepresented. The Agreement is a comprehensive agreement that covers equitable distribution; spousal support; child custody; child support, health insurance and tax exemptions; counsel fees; waiver of beneficiary designation; breach and waiver; and modification. At issue is a provision under the heading of equitable distribution, sub-heading real property that states:

[t]he mortgage currently existing on the property in Muncy, Pennsylvania, in favor of Wells Fargo Bank, N.A. shall be the sole and exclusive responsibility of Husband. However, Wife shall pay to Husband the sum of Six Hundred Dollars (\$600.00) monthly to assist with the mortgage obligation. Said monthly payments are to continue until the youngest of the parties' children attains the age of eighteen (18) years or graduates from high school, whichever occurs last. The parties agree that Wife's payments to Husband shall be in lieu of child support.

Wife's Petition to Interpret Agreement

Wife requests that the Court interpret the Agreement to determine if the six hundred dollar (\$600) monthly payments are in lieu of child support or if the payments stand alone and apart from any child support obligation. Wife further asks that if the Court determines that the payments are in lieu of child support that the payments be vacated because in the interim Husband filed a claim for child support with the Domestic Relations Office and it was determined that Husband is not presently entitled to child support.

Prior to discussing Wife's Petition the Court will address Husband's Motion to Dismiss based on the petition not being properly before the Court.

Husband's Motion to Dismiss

In chambers counsel for Husband raised the issue that the petition was not properly before the Court. Counsel argued that a new pleading to a separate docket number in conjunction with civil pleadings was needed as this was separate and apart from the divorce issue and a declaratory judgment order was needed. At that time counsel moved for dismissal stating that the Court retained jurisdiction for enforcement

of the Agreement only not interpretation therefore the Court was without jurisdiction.

Husband's motion for dismissal is hereby **DENIED**.

The Court is granted original jurisdiction over divorces and original and continuing jurisdiction over distribution of assets via 23 Pa, C.S. § 3104.

23 Pa, C.S. § 3104. Bases of jurisdiction.

(a) *Jurisdiction*. --The courts shall have original jurisdiction in cases of divorce and for the annulment of void or voidable marriages and shall determine, in conjunction with any decree granting a divorce or annulment, the following matters, if raised in the pleadings, and issue appropriate decrees or orders with reference thereto, and may retain continuing jurisdiction thereof:

(1) The determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, postnuptial or separation agreement and including the partition of property held as tenants by the entirety or otherwise and any accounting between them, and the order of any spousal support, alimony, alimony pendente lite, counsel fees or costs authorized by law. .

..

Additionally, *Pennsylvania Rules of Civil Procedure* Rule 1920.43 vests the Court with jurisdiction over special relief. The Court is vested with jurisdiction to both enforce and interpret the agreement. *Cioffi v. Cioffi*, 885 A.2d 45, 48 (Pa. Super. 2005); 23 Pa. C.S. § 3105 (c). "A court may construe or interpret a consent decree as it would a contract, but it has neither the power nor the authority to modify or vary the decree unless there has been fraud, accident or mistake." *Cioffi* at 48 (quoting *Bianchi v. Bianchi*, 859 A.2d 511, 515 (Pa. Super 2004)). Both Husband and Wife voluntarily entered into the Agreement; it is a consent decree. Therefore, the Court has jurisdiction to hear Wife's petition.

Analysis

Property Settlement Agreements, such as the one in this case, are governed by contract law. *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004) (citing *Vaccarello v. Vaccarello*, 757 A.2d 909, 914 (Pa. 2000); *see also Krizovensky v. Krizovensky*, 624 A.2d 638, 642 (Pa. Super. 1993). When interpreting an Agreement under contract law the Court must look to the intent of the parties. *Kripp* at 1163. If the terms of the contract are clear and unambiguous the Court must ascertain the intent of the parties from the Agreement itself. *Id.* There is no claim of ambiguity by either party.

The argument hinges on whether the monthly payments from Wife are solely to offset the mortgage payment that Husband is responsible for or whether the payments are in lieu of child support. Husband argues that it was not his intent to receive the payments in lieu of child support. While Wife argues that it was her intent to bargain away any child support obligation by paying Husband six hundred dollars monthly. When determining the intent of the parties this Court looks at the terms of the contract in entirety. The intent of the parties is clear. As previously stated under the provision 6 (A) Real Property, the Agreement states:

Wife shall pay to Husband the sum of Six Hundred Dollars (\$600.00) monthly to assist with the mortgage obligation. Said monthly payments are to continue until the youngest of the parties' children attains the age of eighteen (18) years or graduates from high school, whichever occurs last. *The parties agree that Wife's payments to Husband shall be in lieu of child support.* (emphasis added).

The payments are scheduled to end when the youngest child reaches majority or graduates high school the same manner in which support payments end. The Agreement then states that the payments are in lieu of child support. Finally, leaving that section and

moving to the heading of child support, health insurance and tax exemptions, the Agreement provides “. . . .Wife shall have no child support obligation, in light of the provisions in paragraph 6(A) above.” Taking all of the terms into consideration it is evident that the parties intended the monthly payments for the mortgage to be in replace of any child support obligation Wife would have. Parents are not permitted to bargain away child support. *Hyde v. Hyde*, 421 Pa. Super 415, 419 (1992); *see also Hertz c. Hertz*, 48 Pa. D. & C. 4th 424, 430 (Chester County 1999); *Metzer v. Metzer*, 4 Pa. D. & C. 5th 417, 438. Provision 6(A) of the Agreement violates public policy.

Therefore, Wife’s Petition to Interpret Agreement is hereby **GRANTED**. Provision 6(A) of the Agreement and provision 9 that states Wife shall have no child support obligation is hereby **VOID** and **UNENFORCEABLE**. The remainder of the Agreement shall remain in full force and affect.

BY THE COURT,

Joy Reynolds McCoy, Judge