

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

JK,		:	NO. 10-20,735
	Plaintiff	:	
		:	
	vs.	:	
		:	
BK,		:	
	Defendant	:	IN DIVORCE

OPINION & ORDER

AND NOW, this 22nd Day of **June, 2012**, this order is entered after a hearing held on June 11, 2012 regarding Wife’s Petition for Special Relief filed April 2, 2012 and Husband’s Petition for Bifurcation filed May 14, 2012. Present at the hearing was Wife, BK, with her counsel Robert Gibson, Esquire and Husband, JK, with his counsel Michael Morrone, Esquire.

Background

Husband and Wife were married on July 27, 1999. In contemplation of their upcoming wedding the parties entered into a prenuptial agreement (hereinafter “1999 Agreement”) which was signed on July 25, 1999. After approximately nine (9) years of marriage the couple decided to separate. In July of 2008¹ the parties met at a restaurant, Smokey Bones, in Wilkes-Barre, PA, at that time Wife presented Husband with a postnuptial agreement (hereinafter “2008 Agreement”). At that time the 2008 Agreement was executed by both parties.

Husband made monetary payments to Wife by depositing money into Wife's daughter's bank account in the total amount of approximately \$2,910.00. In addition Husband contributed monies for Wife's apartment at Cherry Hill Towers. There was a dispute as to how much money Husband actually paid to Cherry Hill Towers. Wife testified that Husband only financed the first six (6) months of her lease, which amounted to approximately \$8,100; while Husband testified that he paid for her entire year lease which approximately \$13,100. Husband further testified that he paid Wife's car payments for two years.

Wife argues that the monies that Husband paid her was based on his obligations from the 2008 Agreement. She claims that Husband exhibited partial performance of the 2008 Agreement then stopped. Through her Petition for Special Relief Wife is seeking enforcement of the 2008 Agreement.

Husband argues that he was not paying Wife in order to comply with the terms of the 2008 Agreement but rather to apply with the terms of the 1999 Agreement. Husband points to Section E subsection 6 (b) of the agreement which states: "[i]n the event of divorce and if the parties have been married up to five (5) years (from the date of marriage to date of divorce), Husband shall pay Wife the sum of \$15,000" and claims that he was just paying towards the \$15,000 owed to Wife and he has fulfilled his obligation.² Husband further argues that the 2008 Agreement is not a valid contract

¹ This date is approximate, Wife testified that she knows that it was sometime in July of 2008 while husband testified that he is uncertain of the date but has no reason to deny that it was in July of 2008.

² At this time the Court was not asked to interpret whether Wife was due monies based on five years of marriage or 10 years of marriage.

because 1.) lack of consideration; and in the alternative 2.) the 1999 Agreement was not subject to modification and this agreement would be a modification of payment terms.

In addition to the Petition for Special Relief filed by Wife, Husband has filed a Petition for Bifurcation. Husband's position is that he has moved on with his life: he lives with a girlfriend, their infant son and the daughter of his girlfriend. He states that he has been separated from Wife for four (4) years; all of the marital assets were divided; neither party maintains the other on their insurance; the couple has the 1999 Agreement to fall back on; and the only outstanding issues are an Internal Revenue Service Bill for approximately \$58,000 and a debt to Wife's mom for a personal loan in the amount of \$12,000. Husband asserts that neither party would be prejudiced by bifurcation.

Wife's Petition for Special Relief

Analysis

A postnuptial agreement is a contract and is governed by contract law. *Laudig v. Laudig*, 624 A.2d 651, 653 (Pa. Super. 1993). For a contract to be enforceable there must be offer, acceptance, consideration and a mutual meeting of the minds. *Schreiber v. Olan Mills*, 426 Pa. Super. 537, 541, 627 A.2d 806, 808 (1993 Pa. Super.).

The Restatement (Second) of the Law of Contracts provides the following definitions to the essential terms of a contract:

§ 24 Offer Defined - An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.

§ 50 Acceptance of Offer Defined; Acceptance by Performance; Acceptance by Promise

(1) Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.

(2) Acceptance by performance requires that at least part of what the offer requests be performed or tendered and includes acceptance by a performance which operates as a return promise.

(3) Acceptance by a promise requires that the offeree complete every act essential to the making of the promise.

§ 71 Requirement of Exchange; Types of Exchange

(1) To constitute consideration, a performance or a return promise must be bargained for.

(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

(3) The performance may consist of
(a) an act other than a promise, or
(b) a forbearance, or
(c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

The 2008 Agreement in question is a one page document consisting of seven (7) paragraphs. The first paragraph is the introduction, the remaining six (6) paragraphs are instructional with five (5) of the six (6) paragraphs starting with either “Jim continues to” or “Jim agrees to” and the remaining paragraph states that the parties agree to split the contents of the house. The 2008 Agreement states that it is made with the “sole purpose of maintaining a civil relationship in this separation.” This Court finds that that is not

valid consideration. Without valid consideration the 2008 Agreement fails as it is not an enforceable contract but an unenforceable promise. Therefore, Wife's Petition for Special Relief is **Dismissed**.

Husband's Petition for Bifurcation

Analysis

23 Pa. C.S. § 3323 (c.1) *Bifurcation*. --With the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b). In the absence of the consent of both parties, the court may enter a decree of divorce or annulment prior to the final determination and disposition of the matters provided for in subsection (b) if:

- (1) grounds have been established as provided in subsection (g); and
- (2) the moving party has demonstrated that:
 - (i) compelling circumstances exist for the entry of the decree of divorce or annulment; and
 - (ii) sufficient economic protections have been provided for the other party during the pendency of the disposition of the matters provided for in subsection (b).

The first prong of the bifurcation test is establishing grounds for the divorce. Husband established grounds when he filed an affidavit pursuant to section 3301 (d) of the Divorce Code³ and Wife failed to file a counter-affidavit. **23 Pa. C.S. § 3323 (g)**.

The second prong is establishing compelling circumstances and that sufficient economic protections have been set in place. Husband's position is that he wants the divorce; the bifurcation could be completed with no complications as there is only debt

³ Husband filed an Amended Divorce Complaint on March 23, 2011 that plead § 3301 (d) and filed his affidavit the same day.

and Wife is not on his insurance; there would be no prejudice from separating the divorce and economic issues; and Husband has a new life waiting for him. Wife's position is that bifurcation must be fair to both parties and due to the financial disparities between Husband and Wife bifurcation is not fair in this case. Wife further argues that Husband's petition was filed after her petition so it is nothing more than Husband not wanting to pay what is owed to her.

Taking into consideration the totality of the circumstances the Court finds that Husband has presented compelling circumstances that warrant bifurcation. The Court finds that Wife is not prejudiced by bifurcation nor is she financially impacted as she is not currently receiving any monies from Husband. Additionally, the prenuptial agreement should simplify any remaining economic issues.

Therefore, Husband's Petition for Bifurcation is hereby **Granted**.

BY THE COURT,

Joy Reynolds McCoy, Judge