

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

JK,	:
Appellant/Plaintiff	: NO. 10-20,735
	:
vs.	:
	:
BK,	: RULE 1925(a) OPINION
Appellee/Defendant,	:

DATE: September 24, 2012

**OPINION IN SUPPORT OF THE ORDER OF JUNE 22, 2012 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

BK, (hereinafter “Wife”) has appealed this Court’s June 22, 2012 Order. Wife filed her appeal on July 25, 2012 and the appeal is docketed to 1349 MDA 2012. This Opinion is submitted in regard to the pending appeal.

Wife’s appeal should be denied and the Order of June 22, 2012 affirmed. Wife’s appeal is based on Wife’s Petition for Special Relief that was filed with the Court on April 2, 2012 and subsequently decided on June 22, 2012. The Court relies on the reiteration of facts and the reasoning explained in the comprehensive Order of June 22, 2012.

In Wife's Concise Statement of Errors Complained of Wife cites the following errors:

1. The trial court erred by failing to enforce the 2008 (postnuptial) Agreement as valid and binding.
2. The trial court erred by holding that the 2008 (postnuptial) Agreement was not an enforceable contract.
3. The trial court erred by finding that the 2008 (postnuptial) Agreement was not supported by valid consideration.
4. The trial court erred by failing to consider all of the terms of the 2008 (postnuptial) Agreement when deciding whether valid consideration existed.
5. The trial court erred by failing to find that the 2008 (postnuptial) Agreement was valid under the Pennsylvania Uniform Written Obligations Act, 33 P.S. § 6.
6. Since the trial court did not directly address the issues raised in Defendant's/Appellant's Motion for Reconsideration (denied without opinion), Appellant also states in general terms that the trial court erred pursuant to Pa. R.A.P. 1925 (B) (4) (iv).

In the Order of June 22, 2012 the Court addresses the rationale behind holding that the 2008 Agreement was not valid, binding, or enforceable. The June 22, 2012 order addresses the first four issues complained of. The Court did not err in failing to enforce the 2008 Agreement as it was a list of promises that Wife had Husband sign and not a valid contract. The 2008 Agreement failed as a contract because it lacked consideration. *Restatement of Contracts (2nd) § 71*. There was no bargaining, Wife drafted the 2008 Agreement that consisted of "Jim agreeing to or continuing to;" there was no meeting of the minds; subsequently there was not an Agreement that was valid or binding. *Id.*

In her Motion for Reconsideration, filed on July 19, 2012, Wife argued that there was valid consideration based on the holding of *Burkholder's Appeal*. 105 Pa. 31

(1884). The 2008 Agreement fails under *Burkholder's* consideration test as the agreement was not for the "settlement and compromise of doubtful and disputed rights." *Burkholder's Appeal*, 105 Pa. 31, 43 (1884). Additionally, the case at hand is distinguishable from *Burkholder* in the fact that the Court held family compromise to be consideration when the goal was to reunify the family unit. In this case, the goal was not reunification, the goal was separation. Therefore, the Court did not err and the 2008 Agreement fails for lack of consideration. When reaching the decision the Court took into consideration the 2008 Agreement in entirety, interpreting the contract against the drafter; all of the evidence presented; the credibility of the witnesses; and the applicable law and ultimately decided that the 2008 Agreement was not a valid contract.

The June 22, 2012 Order the Court did not address the Pennsylvania Written Obligations Act and will do so here. The Court did not err in failing to find that the 2008 Agreement was valid under the Pennsylvania Uniform Written Obligation Act as the act was not applicable to the agreement in controversy.

33 P.S. § 6 When written instruments without consideration valid

A written release or promise, hereafter made and signed by the person releasing or promising, shall not be invalid or unenforceable for lack of consideration, if the writing also contains an additional express statement, in any form of language, that the signer intends to be legally bound.

The Pennsylvania Uniform Written Obligations Act is not applicable to the 2008 Agreement. The statute states that there must be language that the signer intends to be legally bound there is nothing in the 2008 Agreement that expresses intent to be legally

bound. *Id.* Above the signature line in the 2008 Agreement is the sentence “by signing the parties agree to follow this contract until a settlement is reached,” while that may be the parties pledging their respective promises that is not the parties expressing their intent to be legally bound.

Additionally, prior to the Motion for Reconsideration filed on July 24, 2012 counsel for Wife did not plead that the 2008 Agreement should be upheld under the Pennsylvania Uniform Written Obligations Act nor did counsel argue the fact during the hearing of June 11, 2012 even though counsel for Husband argued the lack of consideration. Therefore, this Court argues that counsel for Wife failed to preserve the record and therefore waived his right to appeal on this ground.

Wife’s final error complained of is that the trial court erred pursuant to Pa. R.A.P. 1925 (B) (4) (iv). Wife’s argument seems to be that in light of the fact that she filed for reconsideration on July 24, 2012 filing a Concise Statement of Errors Complained of on Appeal was redundant and an error by the Court. There was not error by the Court when requiring Wife to file a Concise Statement of Errors Complained of. Requiring the statement was prudent on the part of the Court; Wife originally filed for reconsideration based on two alleged errors and her list of errors is now six.

CONCLUSION

In order to reach the final decision this Court heard testimony; reviewed the admitted evidence; reviewed the 2008 Agreement in entirety; researched the law; and applied the applicable law. This Court did not abuse its discretion or err in its decision. The Court's order of June 22, 2012 should be affirmed and Wife's appeal dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge