

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

<b>RS,</b>		:	<b>NO. 12-20,352</b>
	<b>Plaintiff</b>	:	
		:	
	<b>vs.</b>	:	
		:	
<b>FS,</b>		:	
	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**OPINION & ORDER**

AND NOW, this 11<sup>th</sup> Day of **June, 2012**, this order is entered after a hearing held on May 31, 2012 regarding Wife’s Petition for Special Relief in the Nature of a Declaratory Judgment filed March 8, 2012. Present at the hearing was Wife, RS, with her counsel Christina L. Dinges, Esquire and Husband, FS, II, with his counsel Janice R. Yaw, Esquire.

***Background***

Husband and Wife were involved in a relationship which began sometime in 1995. Their first child was born in 1996. Their second child was born in 1998. At some point Husband and Wife decided to marry and ultimately set the wedding date for September 18, 1999. Prior to the wedding Husband presented Wife with a prenuptial agreement (hereafter “Agreement”). Husband alleges that he presented the Agreement to Wife in late August or early September. Wife alleges that Husband presented the Agreement to her on September 16, 1996 two days prior to the wedding. Both parties agree that Husband told Wife that if she did not sign the document there would be no

wedding. Wife signed the agreement on September 16, 1999. Wife alleges that she did not sign the agreement in front of the notary who notarized her signature. The notary, Nelson Allen, testified that he witnessed Wife and Husband sign the Agreement at their home. Wife, however, does not dispute the fact that she signed the agreement. The parties were married two days later. The parties are currently in the process of divorcing.

Wife is seeking to have the Agreement declared invalid and unenforceable. Wife's reason for seeking the invalidation of the Agreement is two-fold: 1) lack of full and fair disclosure; 2) duress and or undue influence.

Wife's claim of lack of full and fair disclosure is based on the fact that husband is a beneficiary of a substantial trust. The trust was not disclosed in the agreement. Wife first found out about the trust in 2002, three years after the marriage, when Husband turned 35 years old and received a payment of approximately \$125,000. Husband argues that the trust was not listed in the agreement because he did not know about its existence and in fact he became aware of its existence at the time he received his first payout.

Wife's duress and or undue influence argument is based on the fact that Husband presented the agreement to her two days prior to the wedding and that he threatened to call off the wedding if the agreement was not signed. Wife did not want to call off the wedding. All of the arrangements for the wedding had already been made; invitations were sent, guests were in town for the event and the rehearsal dinner was that night. In addition to the wedding being fully planned, Wife was a 23 year old unemployed mother of 2 small children she felt as if she had no other option but to sign the agreement.

## *Analysis*

A prenuptial agreement is a contractual agreement between two individuals who are contemplating marriage. *Simeone v. Simeone*, 525 Pa. 392, 400 (1990). A dispute regarding a prenuptial agreement is governed by contract law. *Id.* The contracting parties are bound by the terms of the agreement unless there is fraud, misrepresentation, or duress. *Id.*<sup>1</sup>

When entering into a prenuptial agreement full and fair disclosure is required. *Simeone* at 402 (citing *Hillegass Estate*, 431 Pa. 144, 152; 244 A.2d 672, 676 (1968)). “Parties to these agreements do not quite deal at arm's length, but rather at the time the contract is entered into stand in a relation of mutual confidence and trust that calls for disclosure of their financial resources.” *Id.* If an agreement, such as the one in this case, contains a clause that full and fair has been made there is a presumption of full disclosure; this presumption can only be rebutted through clear and convincing evidence of fraud or misrepresentation. *Simeone* at 403.

The Agreement specifically includes the following disclosure provision:

### “III. FINANCIAL DISCLOSURE

As an inducement to RS’s execution of this Prenuptial Agreement, FS, has made a full and fair disclosure of the assets, income, expectancies and liabilities of SC&EC, and FSREC, Inc. It is acknowledged by both parties that SC&EC is primarily a service business, however, there is various equipment such as trucks, back hoes, and various other items that are purchased and sold at various times. Both parties agree that the value of SC&EC is \$750,000.00.

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<sup>1</sup> 23 Pa. C.S. § 3106 governs premarital agreements and sets forth guidelines for when a premarital agreement shall not be enforceable. The statute became effective on January 28, 2005 and provides that it is only applicable to premarital agreements executed on or after the statute’s effective date. The Agreement in this case was executed in 1999; therefore, 23 Pa. C.S. § 3106 is not applicable.

It is further agreed that FS has made full and fair disclosure of the two (2) parcels of real estate, located at 690 Woodland Avenue, Williamsport, Penna., and 174 Evergreen Terrace, Montoursville, Penna. It is further acknowledged that RS has personal knowledge of both of these properties and has seen both properties and has had a full opportunity to obtain an appraisal if she so desires.

The parties hereby confirm that each has disclosed to the other the full extent of their respective present assets, income, expectancies and liabilities.”

Husband testified that at the time the Agreement was drafted, he did not actually own SC&E. The business was started by his grandfather, FW, Sr. Husband, however was the manager of the business and only family member working in the business. Husband’s grandfather, FW, Sr., died in April of 1996. Husband was aware that his grandfather had significant wealth. It was Husband’s understanding that his grandmother, LW, inherited all of his grandfather’s assets upon his death. Husband’s grandmother was living at the time the Agreement was signed. Husband testified that he disclosed the business as he believed he would inherit the business upon his grandmother’s death as he was the manager and only family member involved in the business.

The real estate at 690 Woodland Avenue, Williamsport, Pennsylvania, was titled in Husband’s sole name. He inherited this property from his mother several years earlier. The real estate at 174 Evergreen Terrace was titled in Husband and his grandmother, LW’s names. Husband anticipated that he would receive his grandmother’s interest in the property upon her death. Wife was familiar with both parcels of real estate and lived at 174 Evergreen Terrace with Husband.

Wife alleges that Husband failed to disclose the value of his trust to Wife prior to the signing of the Agreement. In support of her argument, Wife presented as Plaintiff's Exhibit 1 The Last Will and Testament of FW, Sr. Though there was no specific testimony given regarding the Will, the Court's review of the Will shows that upon the death of FW, Sr., all of his certain personalty and his real estate at 1515 Elliot Street, Williamsport, was devised to his wife, LW if she survived him, which she did. Husband was a contingent beneficiary of these assets. FW's residuary estate was left in trust. LW was granted the income from the trust for life with the ability to invade the principal. Upon LW's death, the Will provided for specific bequests of \$5,000.00 each to eight other grandchildren which did not include Husband. The balance of the residuary trust was then to be divided into two equal shares, with trusts to be established for Husband and his brother, LS.

Husband testified that he had no knowledge of the contents of his grandfather's Will. Husband testified that he never received a copy of his grandfather's Will or had received any type of notice after his death of the content of the Will. Husband's belief was that his grandmother received all of his grandfather's assets. Except for a copy of the Will, Wife presented no testimony or evidence that Husband had any knowledge of the content of his grandfather's Will.

The Court finds Husband's testimony credible and that he disclosed in the Agreement every asset he had knowledge of that he could at the time anticipate ultimately having an ownership in. Wife failed to prove through clear and convincing evidence that Husband knew about and intentionally withheld information regarding the

trust. The Court finds that Wife has failed to rebut the presumption of full and fair disclosure.

Wife next asserts that the agreement was signed under duress and that if the Court does not find duress that at a minimum she was a victim of undue influence. Duress is “that degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness.” *Carrier v. William Penn Broadcasting Company*, 426 Pa. 427, 431, 233 A.2d 519, 521 (1967). Wife argues that the threat of calling off the wedding two days prior to the scheduled date with guest staying at their home with the sole purpose of attending the wedding rose to the level of duress. While the Court is not without compassion for what Wife felt when she was presented with the agreement two days prior to her wedding date there is Pennsylvania Supreme Court precedent that states that this is not the definition of duress.

This case is analogous to *Simeone*. In *Simeone* on the day before her wedding at five o’clock in the evening Wife was presented with a prenuptial agreed and told that she must sign. *Simeone* at 404. The Court held that this was not duress. *Id.* Admittedly there some differences between the two cases. In *Simeone*, there was testimony by not only Husband but corroborating witnesses that Wife was aware that a prenuptial agreement was being drafted; there was also testimony that she was presented with the agreement at that late date because at her request the agreement was being revised. *Id.* In the present case Wife claims that she knew nothing of the agreement prior to it being put on the kitchen table on September 16, 1999 while husband claims that the couple had had

multiple conversations regarding the agreement and that he had presented it to her several weeks before the wedding. There are no corroborating witnesses for either side. In the present case Wife was presented the agreement sometime in mid-morning or early afternoon of September 16, 1999 while presumably law firms would be open for business while in *Simeone* Wife received the agreement after normal business hours. *Id.* In addition to the fact that the Court in *Simeone* has previously decided that analogous facts did not rise to the level of duress it is also established that in the absence of threats of actual bodily harm there can be no duress where the party is free to consult with counsel. *Carrier v. William Penn Broadcasting Company*, 426 Pa. 427, 431, 233A.2d 519, 521 (1967). In this case there was no testimony from either Wife or Husband that Husband prohibited Wife from seeking the advice of counsel. Even if the Court accepts Wife's thought it was only two days before her wedding Wife did have the time and ability to seek the advice of counsel if she so chose to. Husband testified that he had given Wife the agreement several week prior to the wedding and inquired of Wife whether or not she intended to take the agreement to an attorney. The Court finds that Wife did not sign the agreement under duress.

Wife's alternate claim is that if not duress this is a case of undue influence. For a claim of undue influence to be found there must be a confidential relationship and ". . . such influence is obtained by excessive importunity, superiority of will or mind, or by any other means constraining the grantor to do what he is unable to refuse." *Thomas v. Seaman*, 451 Pa. 347, 352, 304 A.2d 134, 138 (1973). The testimony failed to establish that Wife was without the ability to think freely and clearly due to Husband's superior

will or mind or influence. The Court finds that Wife did not sign the agreement due to undue influence.

*Conclusion*

The Court finds that Wife did not meet the burden of proof by providing clear and convincing evidence that the agreement should be set aside as unenforceable. The Court finds that Husband provided Wife with a full and fair disclosure of the assets that he was aware of or could reasonably expect to inherit. The Court also finds that Wife signed the agreement freely without undue influence or duress. For those reasons Wife's Petition for Special Relief in the Nature of a Declaratory Judgment is **DENIED** the agreement remains in full force and effect.

BY THE COURT,

Joy Reynolds McCoy, Judge