

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DM,		:	
	Plaintiff	:	DOCKET NO. 12-20,408
		:	CIVIL ACTION – LAW
vs.		:	
		:	
EM.,		:	
	Defendant	:	

OPINION AND ORDER

This matter comes before the Court on Wife’s Petition to Strike the parties’ antenuptial agreement of June 23, 1983. Wife argues that the agreement should be stricken as unenforceable and invalid because her Husband did not fully and fairly disclose his assets prior to entering the agreement; additionally, Wife argues that the agreement fails for lack of consideration. The Court does not agree with Wife’s argument and will enter an order upholding the antenuptial agreement.

I. Factual Background

In this case, the parties signed an antenuptial agreement on June 23, 1983, two days before their marriage on June 25, 1983. At the time the agreement was signed, Husband was twenty-seven (27) years old and Wife was twenty (20) years old, and the parties had been dating for approximately three and one half years. Also, at the time of the signing, Wife was pregnant with the parties’ first child. After almost thirty years of marriage and the birth of two more children, the parties separated in November 2011. The parties are currently in the process of divorcing.

On February 19, 2013, the Court entertained testimony on Wife’s petition to strike the antenuptial agreement. Although the course of time wore on the parties’ memories, both parties testified to the same basic facts surrounding the signing of the agreement. Both parties stated

that the first day that either party saw the agreement was on June 23, 1983; both parties also agree that they signed the agreement on that date, approximately half an hour after first viewing the document. The parties went to an attorney's office to view the document; neither party remembered specifically the attorney who drafted the agreement. Both parties agree that no property values were discussed at the time of signing. Both parties also agree that Husband never told Wife on that date that he would not marry her if she failed to sign the agreement. Also, both parties agreed that Wife was not prohibited by Husband from getting her own attorney to review the document prior to signing.

Yet, the parties do disagree on a few facts. Husband vehemently testified that he always told Wife that she would need to sign an antenuptial agreement before they would wed; Wife testified that she never remembered these statements. Wife also testified that Husband's mother and sister arranged for the attorney to draft the agreement; Husband does not remember such, however, he testified that he never told the attorney what provisions to put in the agreement.

Turning to the agreement, as it pertains to the parties' pre-marital property, the agreement addresses only two pieces of Husband's property: a piece of farmland and the M & M Asphalt Company.¹ Agreement, 2-3. Pertaining to the farmland, the agreement provides that Husband will retain sole ownership of his real estate located in Anthony Township, Montour County, Pennsylvania. The agreement does not provide for any address or parcel number. Additionally, as it pertains to the farmland, the agreement provides that Wife waives her right to any appreciation of the value of that real estate. The agreement does not list the property value. Agreement, 2.

¹ The initial agreement contained a third provision for any home built on the farmland to be owned solely by Husband if the parties were to divorce. At the time of signing, the parties negotiated to remove that provision. Agreement, 3.

Regarding the M & M Asphalt Company, the agreement provides that Wife shall have no ownership interest in the company. The agreement states that Husband does not presently own the company, but anticipates receiving it by inheritance or gift from his parents. Agreement, 3.

The parties agree that the agreement's provision regarding M & M Asphalt Company is now moot. Husband testified that he placed the business in Wife's name during their marriage, that Wife is the current president of the company, and that Wife owns all of the company's stock. Therefore, the Court need only determine if the agreement is unenforceable as to its farmland provision.

Regarding the farmland, Husband testified that his family had owned the farmland since he was a boy. Husband testified that he worked on the farmland ever since he was a teenager. He testified that he received the farmland as a gift from his family in 1976. Husband also testified that he did not know the exact value of the land at the time the parties entered into the agreement.

II. Discussion

Antenuptial agreements are contracts made by parties prior to their marriage; these agreements should be evaluated by the Court under contract principles. *Porreco v. Porreco*, 811 A.2d 566, 570 (Pa. 2002); *Simeone v. Simeone*, 581 A.2d 162, 165 (Pa. 1990). Prior to entering into antenuptial agreements, the parties must fully and fairly disclose their assets. 881 A.2d at 570; 581 A.2d at 166-67. If there is no full and fair disclosure of assets, an assertion may be made that a material misrepresentation induced one of the parties into entering the agreement. 881 A.2d at 570; 581 A.2d at 167. Thus, an antenuptial agreement may be invalidated by failing to make a full and fair disclosure of assets. 811 A.2d at 570. Although disclosure must be full and fair, disclosure must not be *exact*. *Colonna v. Colonna*, 791 A.2d 353 (Pa. Super. Ct. 2001),

appeal denied, 803 A.2d 732 (Pa. 2002); *Simeone*, 581 A.2d at 167. The Court should analyze whether an adequate disclosure occurred on a case-by-case basis. *Nigro v. Nigro*, 538 A.2d 910, 914 (Pa. Super. Ct. 1988), *superceded in part by Sneeringer v. Sneeringer*, 876 A.2d at 1036 (Pa. Super. Ct. 2005) (superceded in regards to the appealable nature of an order to enforce a marital settlement agreement).

Instantly, Wife requests that the Court declare invalid and unenforceable the parties' antenuptial agreement on two grounds. Wife argues that the agreement fails Husband to fully and fairly disclose his assets. Specifically, regarding Wife's full and fair disclosure argument, she argues that the agreement has no listed property value for the farmland, and that this fact, in and of itself, renders the agreement unenforceable. Additionally, Wife argues that the agreement fails for lack of consideration.² The Court will address Wife's disclosure argument first.

If an antenuptial agreement itself states that a full and fair disclosure of the parties' assets occurred prior to the entry of the agreement, a presumption of full and fair disclosure arises. *Id.* In order for a spouse to challenge an antenuptial agreement with a full and fair disclosure clause, she must prove evidence of fraud or misrepresentation by clear and convincing evidence. *Id.* Clear and convincing evidence is testimony so direct, weighty, and convincing that it would lead the trier of fact to come to a clear conclusion regarding truth the facts at issue. *In re R.G.M.*, 997 A.2d 339, 347 (Pa. Super. Ct. 2010), *appeal denied*, 12 A.3d 372 (Pa. 2010) (citing *In re A.L.D.*, 797 A.2d 326, 336 (Pa. Super. Ct. 2002) (citations omitted)). With these standards in mind, the Court turns to the parties' agreement.

Presently, the parties' antenuptial agreement contains a full and fair disclosure clause; that clause provides:

² At the time of hearing, Wife withdrew her argument that the agreement did not contain a fair provision for her based upon *Simeone*, *supra*.

1. Each party hereby acknowledges that he or she has had the opportunity to ascertain, has been informed by a full and frank disclosure of the other, and is fully acquainted with and aware of the circumstances regarding this Agreement, and that each as ascertained and weighed all the facts, conditions and circumstances likely to influence his or her judgment in all matters herein. Each party acknowledges that he or she has given due consideration to all matters herein, and that each has given due consideration to all such matters and questions including but not limited to the rights to the equitable distribution and alimony provided for by the laws of the Commonwealth of Pennsylvania, and understands and consents to all of the provisions herein.

Agreement, 2. Therefore, regarding the parties' agreement, a presumption exists that a full and fair disclosure of assets occurred. It is Wife's burden to prove fraud or misrepresentation occurred prior to or at the time of signing the agreement. The Court finds that Wife failed to meet this burden.

In this instance, the Court finds that Wife failed to rebut the presumption of adequate disclosure by clear and convincing evidence. During the hearing, Wife proved that the farmland had no listed value in the agreement by producing the agreement itself. Also, Wife proved that there no was no address or parcel number listed for the farmland in the agreement; the land was simply listed as Husband's real estate located in Anthony Township, Montour County, Commonwealth of Pennsylvania. However, this evidence, in and of itself, does not rise to the level of clear and convincing evidence of fraud or misrepresentation. Wife argues that the mere fact that the property had no listed value in the agreement nullifies the agreement. The Court finds this holding is consistent with the Lycoming County precedent set forth in *Savidge v. Savidge*, 12-20,352 (June 11, 2012) (J. McCoy) (in that matter, the parties' antenuptial agreement did not list the fair market value of Husband's real estate). In this matter, Husband testified that he received the land as a gift from his family in 1976, and that he did not know the value of the land at the time the parties entered into the agreement in 1983. Also, both parties

testified that their courtship occurred for approximately three and a half years prior to their marriage. The Court notes that neither party testified regarding whether or not Wife had ever seen or been on the farmland during the parties' courtship. The burden was on Wife to produce this evidence. The Court finds that Wife failed to rebut the presumption of full and fair disclosure. The Court will uphold the agreement on this ground.

Additionally, the Court finds that Wife's argument regarding lack of consideration also fails. In this instance, as with most antenuptial agreements, the consideration for the agreement is the marriage itself. *See Fridenberg's Estate*, 8 Pa. D. & C. 705, 708 (Mar., 25, 1927).

Therefore, the Court will uphold the parties' antenuptial agreement.

The Court enters the following Order.

ORDER

AND NOW, this 12th day of March, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Wife's Petition to Strike is DENIED. The parties' June 23, 1983 antenuptial agreement is UPHeld as being valid and enforceable.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Janice R. Yaw, Esq. – Counsel for Wife
Patricia Bowman, Esq. – Counsel for Husband
Gary L. Weber, Esq. – Lycoming County Reporter