IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CFP,	**:**	**NO. 14-21,281**
Plaintiff	**:**	
	:	
vs.	**:**	
	:	
REP, JR.,	**:**	
Defendant	**:**	**IN DIVORCE**

O R D E R

AND NOW, this **22nd** day of **June, 2016**, this Order is entered after hearings held on December 1, 2015, and February 12, 2016, regarding Wife's Petition to Enforce Property Settlement Agreement filed September 30, 2015. Present at the hearings were Husband, REP, Jr., with his counsel LeRoy Smigel, Esquire, and Deborah E. Crum, Esquire, and Wife, CFP, with her counsel John C. Howett, Jr., Esquire, and Trisha Hoover, Esquire. At the conclusion of the testimony, a briefing schedule was established, whereupon the parties' initial briefs were to be filed and exchanged by March 24, 2016, and the deadline for submitting rebuttal briefs was April 4, 2016.

Procedural History

On September 19, 2014, CFP ("Wife") filed a Complaint in Divorce. On September 30, 2015, Wife filed a Petition to Enforce Property Settlement Agreement. REP, Jr. ("Husband") filed an Answer with Counterclaim and Motion to Strike Plaintiff's Petition to Enforce Property Settlement Agreement on November 24, 2015. In his Answer, Husband's counsel alleged that Wife violated Pa.R.C.P. 1019(i), in that she failed to attach a copy of the "Agreement" to the Petition. Husband attached a copy of the Agreement as an Exhibit to his Answer. Husband's Motion to Strike Plaintiff's Petition to Enforce Marital Settlement Agreement alleged that the document to which

Wife referred in her Petition was a draft and not a fully integrated agreement, and therefore Wife failed to state a claim on which relief could be granted, in violation of Pa.R.C.P. 1023.1(c).

A Hearing was held on Wife's Petition on December 1, 2015. At that hearing, Husband's Motion to Strike was withdrawn with regard to the non-attachment of the exhibit. As to the other issue – whether the document sought to be enforced by Wife was indeed a fully integrated, binding agreement – is a matter of law, the hearing proceeded. Due to insufficient time to conclude the testimony at the December 1, 2015, hearing, the matter was continued to February 12, 2016.

On February 11, 2016, one day before the scheduled conclusion of the hearing, Husband filed a Motion in Limine to Exclude Privileged Mediation Document as Evidence, arguing that it should be granted because the session in which the document sought to be enforced was signed was a mediation session and Wife violated 42 Pa.C.S. § 5949 when she sought to introduce a privileged mediation document that was "not a settlement document because it was not intended to be a final, binding agreement pursuant to the verbal terms of the session with Dr. Butto." Also on February 11, 2016, Husband filed a Motion in Limine to Permit the Testimony of Dr. Anthony Butto, arguing that his testimony was necessary and relevant to show the parties' intent pursuant to the verbal terms of the mediation session on September 6, 2014.

Both Motions in Limine were addressed at the hearing on February 12, 2016, wherein the Court heard argument by both counsel, reviewed the Motions in detail, and conducted independent research, after which it denied both Motions on the record. The

Court found that (1) the document could be admitted under the exception to 42 Pa.C.S. § 5949, and (2) based upon the statute, the testimony of Dr. Butto would not be permitted. (T.P. 2/12/16, pg. 28).

Factual History

In August of 2014, the parties decided to divorce after approximately 35 years of marriage, and decided to attend mediation in an attempt to settle the financial and property aspects of their marriage. (T.P. 12/1/15, pg. 10). In preparation for the last mediation session, Wife, with the input of Husband, prepared a two page document, the first page of which was entitled “Division of Joint Assets,” and the second of which was divided into two sections: “Division of Personal Property” and “Alimony Agreement.” (W-1). The heading on both pages of this document stated “Draft” and bore the date of 8/29/14. (W-1). The document in question was executed on September 6, 2014, by both Husband and Wife, in the presence of a third party, Dr. Butto, who also signed the document. Both parties acknowledged that the document contained a comprehensive list of all of the assets and liabilities that they could identify (T.P. 12/1/15, pg. 47, 72; T.P. 2/12/16, pg. 44).

Shortly after it was signed by the parties, they began to effectuate some of the transfers contemplated by the document. On September 15, 2014, the parties jointly signed a letter of instruction to Merrill Lynch regarding the transfer of equities from a joint account to Wife’s name alone. (W-2). Further, the letter instructed the advisor to remove Wife’s name from the joint account (W-2). Both parties acknowledged that the transfers of the retirement accounts contemplated in the signed document could not be completed without negative tax consequences until after the divorce was finalized. (T.P.

12/1/15, pg. 17; T.P. 2/12/16, pg. 45). Husband began paying Wife $12,083.33 per month, pursuant to the terms of the "Alimony Agreement" portion of the document, shortly after the parties signed the document, and continued to pay that amount through August of 2015. (T.P. 12/1/15, pg. 16).

Wife filed the Petition to Enforce Property Settlement Agreement after Husband obtained separate counsel, who reviewed the signed document and advised that Husband would no longer abide by any of the terms of the document. Wife avers that the document signed by the parties on September 6, 2014, is valid and enforceable under 23 Pa.C.S. § 3105(a), which states that "[a] party to an agreement regarding matters within the jurisdiction of the court . . . whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this part to enforce the agreement to the same extent as though the agreement had been an order of the court except as provided to the contrary in the agreement."

Wife argues that the document signed on September 6, 2014, is a binding, completely integrated agreement settling the division of all assets and debts of the parties, and providing financial support to wife in a definitive amount for a specific duration of time. Husband, despite signing the document and testifying that it contained all the assets and liabilities of the parties, disagrees and asserts that the document was merely a draft and that he did not intend for it to be a final binding agreement. In support of his position that the document is not enforceable, Husband relies heavily on the fact that the word "DRAFT" was not removed from the document and that husband was not apprised of his rights under the Divorce Code prior to the parties' signing it.

Legal Analysis

The "determination of marital property rights through prenuptial, postnuptial and settlement agreements has long been permitted, and even encouraged." Laudig v. Laudig, 624 A.2d 651, 653 (Pa. Super. 1993). Property Settlement Agreements 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). A contract is formed when (1) there is an offer and acceptance**;** i.e. a mutual understanding manifesting an intent by the parties to be bound by the terms of the agreement, (2) the terms of their bargain are shown with sufficient clarity and (3) there is an exchange of consideration. Weaverton Transp. Leasing v. Moran, 834 A.2d 1169, 1172 (Pa. Super. 2003).

The Court must give plain meaning to a clear and unambiguous contract provision unless doing so would be contrary to a clearly expressed public policy. Prudential Prop. & Cas. Ins. Co. v. Colbert, 813 A.2d 737, 750 (Pa. 2002). The intent of the parties to a written contract is to be regarded as being embodied within the writing itself; furthermore, when the words are clear and unambiguous, the intent is to be discovered only from the express language of the agreement. Willison v. Consolidation Coal Co., 637 A.2d 979, 982 (Pa. 1994). This concept emphasizes just how narrow the Court's role is as interpreter of a contract: "Courts in interpreting a contract do not assume that its language was chosen carelessly." Stewart, 498 Pa. at 51, 444 A.2d at 662 (*quoting* Moore v. Stevens Coal Co., 315 Pa. 564, 568, 173 A. 661, 662 (1934)).

If a contract is ambiguous, the general rule for interpretation of that contract states that it is the "court's duty when construing a contract to determine the intent of the parties to the contract." Lower Frederick Township v. Clemmer, 543 A.2d 502 (Pa. 1988); Walton v. Philadelphia National Bank, 545 A.2d 1383 (Pa. Super. 1988). "A

contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Walton, 545 A.2d at 1389. When the meaning of a contract is not clear and is ambiguous, then it may be appropriate to look outside the four corners of the writing to determine the parties' intent. Z & L Lumber Company of Atlasburg v. Nordquist, 502 A.2d 697, 700 (Pa. Super. 1985); Metzger v. Clifford Realty Corp., 476 A.2d 1, 5 (Pa. Super. 1984).

Wife argues that the agreement signed on September 6, 2014, was a completely integrated agreement. Husband argues that Wife failed to prove that the document was ambiguous because the word "DRAFT" on the document speaks for itself and therefore what was signed was not intended to be binding and enforceable. Because there is no direct language that the agreement is fully integrated, and the word "DRAFT" was not removed from the heading of the document between when it was initially prepared and revisions were made before ultimately being signed by the parties, there is some ambiguity and the Court must look at the intent of the parties. Kripp, 849 A.2d at 1163.

The original document prepared by Wife was done so with the information contained in the parties' financial statements, from a realtor, and from Husband himself. (T.P. 2/12/16, pg. 36). The initial document, labeled as a "DRAFT," was prepared in advance of the mediation session on August 29, 2014, with Dr. Butto. Subsequent to that session, the parties updated the document with values as of September 6, 2014. (T.P. 2/12/16, pg. 36-37). While husband acknowledged that the document contained alterations and certain terms were crossed out, he testified that he had not requested the term "DRAFT" to be crossed out because "it wasn't a consideration." (T.P. 2/12/16, pg. 85-86). There was no testimony from either party indicating that the agreement was

not a comprehensive listing of their assets and debts. Although the agreement did not contain specific deadlines for the transfer of assets, both parties began to take steps to effectuate the transfers contemplated by the agreement within a reasonable time after it was signed. In fact, without changing the amount each party was to receive, they mutually agreed to adjust the way the assets were split in order to most efficiently perform their obligations under the agreement.

The Court finds that Husband's testimony that he did not understand the agreement to be binding, and that he only made payments to Wife because he believed they were "reasonable" and "it was the right thing to do," contradicted his initial intent. (T.P. 12/1/15, pg. 39, 44). Husband's buyer's remorse does not negate the fact that, after negotiation with Wife, he signed an agreement that disposed of their marital assets in a way that was acceptable to both of them, and provided financial support for Wife in a specific amount for a specific duration. After careful review of the testimony of both parties over the two-day hearing, the Court finds that the record shows that both parties intended for the Agreement to be a binding, final agreement regarding the division of their marital assets and for the provision of support from Husband to Wife, and that both parties almost immediately performed tasks related to their contractual obligations. Husband, in fact, continued to pay the agreed upon amount of support to Wife for a full ten months after signing the agreement, even after meeting with his attorney in November of 2014 (T.P. 12/1/15, pg. 16).

The fact that the agreement did not include some of the provisions found in traditional marital settlement agreements is irrelevant, as the Pennsylvania Supreme Court, in the case of Stoner v. Stoner, declined to mandate that agreements related to

the marital relationship were required to be treated as something other than "business deals" and that parties must be advised of their statutory rights prior to agreements signed by a married couple being enforceable:

> "we do not find that the spousal relationship warrants the extra requirement that the parties be advised of their statutory rights. Rather, we find that the right balance is struck by requiring full disclosure of financial assets, in conjunction with the protection of traditional contract remedies for fraud, misrepresentation or duress. Therefore, we hold that a spouse may enforce a postnuptial agreement without having to demonstrate that statutory rights have been disclosed, either in the postnuptial agreement itself or through other evidence."

Stoner v. Stoner, 819 A.2d 531, 533-534 (Pa. 2003). Additionally, the fact that the parties attempted to negotiate changes once the signed agreement was provided to their respective attorneys does not negate the fact that they signed an agreement on September 6, 2014, by which they initially intended to be bound. This Court finds that, had they not intended to be bound by the terms of the original agreement, they would not have begun performing on it prior to seeking independent counsel. The proposed changes sent back and forth between the parties and their attorneys in the year following the signing of the agreement and the Petition to Enforce were failed attempts to modify the Property Settlement Agreement.

It is well established that according to Pennsylvania law, "the party asserting the existence and validity of a contract has the burden of proving such existence by a preponderance of the evidence." Viso v. Werner, 369 A.2d 1185 (Pa. 1997). The Court finds that Wife did prove by a preponderance of the evidence that the Agreement signed on September 6, 2014, was intended by both parties to be a final settlement of the parties' assets and debts and is therefore enforceable. The Court finds that Husband and Wife, after some negotiation, reached an agreement. The parties then proceeded to

execute every essential term of the agreement, with the exception of the transfer of the retirement accounts, which both parties admitted could not be accomplished until after the final divorce decree was entered, and the deeds to the real estate, which both parties acknowledged would have been signed by Wife had they been presented to her by Husband. The fact that both parties performed on the agreement that they signed demonstrates to this Court that they both intended to be bound by its terms.

This Court finds that Wife's Petition to Enforce Property Settlement Agreement is **GRANTED.** The agreement of the parties dated September 6, 2014, is a binding, enforceable Property Settlement Agreement.

By the Court,

Joy Reynolds McCoy, Judge