In Case You Were Wondering: Will Your Prenuptial Agreement Withstand Court Scrutiny?

Mary V. Ade – made@srr.com

Strong v. Dubin, 75 A.D. 3d 66 (2010), 901 N.Y.S. 2d 214

Facts of the Case

The parties married in 1992 and filed for divorce in 2005. Prior to the marriage, the parties entered into a prenuptial agreement providing in part that Wife would waive all rights to any interest in Husband’s retirement benefits, whether earned prior to or during the marriage. Defendant Wife filed a motion to have the prenuptial agreement set aside.

Relevant State Law

Domestic Relations Law § 236(b)(3) provides that, unless the parties agree otherwise in a validly executed prenuptial agreement, upon dissolution of the marriage, marital property must be distributed equitably between the parties, while separate property shall remain separate. An agreement by the parties, made before or during the marriage, may include, in part relevant here, a provision for the ownership, division, or distribution of separate and marital property.

Trial Court Decision

The motion court found that under ERISA, only a spouse can waive spousal rights to employee plan benefits, a fiancé is not a spouse, and thus, spousal rights to such plans cannot be waived in a prenuptial agreement. The court further ordered that a hearing be held to determine the value of the marital portion of Husband’s retirement benefits and to divide the benefits pursuant to the percentages as stated in the prenuptial agreement.

Husband appealed the ruling.

Appellate Court Decision

The Court of Appeals reversed the decision, holding that the prenuptial agreement contained a valid waiver of Wife’s interest in the marital portion of Husband’s retirement benefits. The Court went on to say that ERISA does not preclude the recognition or enforcement of a valid prenuptial agreement with regard to a divorce proceeding. Further, there is nothing in New York law prohibiting a spouse from waiving his or her interest in marital property by agreement made before or during marriage.

Potts v. Potts, 303 SW 3d 177 (2010)

Facts of the Case

Plaintiff Wife filed for divorce in 2006 after a 21-year marriage. Husband owned Potts Contracting Group, valued at approximately $600,000 at the time of the marriage. One day prior to their wedding, the parties executed a prenuptial agreement that provided, in part, that either party could acquire separate property during the marriage simply by titling and holding any newly acquired property in his or her sole name. During the marriage,
Husband operated his business while Wife raised the children and ran the household. Thus, Wife had no source from which to accrue a separate estate. Husband had the ability to convert presumably marital earnings from his business to separate property, while Wife had no such opportunity.

**Trial Court Decision**

The Pettis County Circuit Court found the parties’ prenuptial agreement to be unconscionable, stating that “an agreement is unconscionable when the inequality is so strong, gross, and manifest that it must be impossible to state it to one with common sense without producing an exclamation at the inequality of it.” The court recognized that Husband was the only one who came into the marriage with assets that could produce future assets. Further, the court stated that whether Husband abused his right to designate assets acquired during the marriage as generated from premarital assets was irrelevant because the agreement was unconscionable at the date of execution.

Husband appealed.

**Appellate Court Decision**

The Court of Appeals affirmed the decision finding the agreement invalid because it allowed Husband to accumulate a large estate of non-marital property while limiting the distribution to Wife exclusively to a formula to be in lieu of maintenance, even after a 20-year marriage in which she had devoted her efforts to raising the children, running the household, and supporting Husband’s business efforts.


**Facts of the Case**

At the time of their wedding, Husband had a Ph.D. in biology and Wife was in the process of obtaining her Ph.D. in biology. They also had approximately equal assets. At the time of the divorce, Wife’s net worth was approximately $850,000 while Husband’s was in excess of $2,000,000. The parties signed a prenuptial agreement five (5) days before their July 17, 1982, wedding. The agreement, drafted by Defendant Husband without benefit of counsel, pertained mainly to the distribution of financial assets and property owned by the parties with a gradual acquisition of a financial interest by the Wife in certain real property. Alimony and child support were not addressed in the agreement.

**Trial Court Decision**

The Probate and Family Court found the agreement valid, holding that both parties voluntarily chose not to retain counsel, had sufficient time to review the agreement, and the agreement was not fraudulently procured or the product of duress. Further, the court stated: “wife recognized that marriage conferred certain rights, and she waived those rights by signing the agreement.” Thus, the agreement was a valid waiver of certain rights Wife may have had to marital property.

Wife appealed the decision.

**Appellate Court Decision**

The Appeals Court of Massachusetts reversed the trial court opinion and remanded for further consideration. The court found that there was no express waiver of marital rights in the agreement, nor plain language or other evidence demonstrating that the parties sufficiently understood their marital rights in the agreement and how they were altering them. Further, the Appellant Wife was not represented by counsel nor had she been advised to seek counsel. Thus, the agreement did not contain a proper waiver of marital rights and was invalid.

**Crews v. Crews, 989 A. 2d 1060 – Conn: Supreme Court**

**Facts of the Case**

The parties executed a prenuptial agreement at the insistence of husband who had previously been married. The agreement provided that during the marriage, each party was required to maintain continuous employment and to take measures to prevent termination of employment, whether voluntary or involuntary. The agreement also provided that each party agreed to keep their respective property separate, whether owned prior to the marriage or acquired during the marriage. Additionally, neither party would seek any cash, property, alimony, or any other property from the other. Finally, the agreement provided that marital property would be divided in proportion to their respective contributions to the acquisition of such property.

Wife requested the trial court to award her alimony, the marital home, and attorney’s fees, all of which were prohibited under the prenuptial agreement.

**Relevant State Law**

Prenuptial agreements entered into after October 1, 1995, are governed by the Connecticut Premarital Agreement Act. Agreements, such as this one, entered into prior to that date, are governed by the equitable rules set forth in McHugh v. McHugh (181 Conn. 482. 436 A.2d 8 (1980). Under McHugh, prenuptial agreements are generally enforceable where 1) the contract was validly entered into; 2) the terms do not violate statute or public policy; and 3) the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work injustice.
Trial Court Decision

The trial court found that enforcing the terms of the prenuptial agreement would be unjust under the third prong of the McHugh decision because a dramatic change in the parties’ economic circumstances had occurred between the signing of the agreement and filing for divorce. Further, this change had not been contemplated at the time the agreement was executed. The trial court ordered Husband to pay monthly alimony of $1,000 for a limited time and awarded Wife a lump-sum property settlement and a portion of Husband’s pension and investments.

Husband appealed, claiming that the trial court had improperly failed to enforce the terms of the prenuptial agreement.

Appellate Court Decision

The Court of Appeals agreed with Husband, finding that the change in the parties’ economic circumstances during the marriage was not beyond contemplation at the time the agreement was executed. In fact, the court stated that no evidence was presented that the parties’ circumstances at the time of the divorce were anything other than what was anticipated. The Court of Appeals noted that the trial court apparently based its decision on perceived inequities in the agreement. However, the court went on to say that whether the trial court thought the agreement was a good bargain was not a proper basis for its decision.

Wife appealed to the Connecticut Supreme Court contending that the trial court’s conclusion that enforcing the prenuptial agreement would result in an injustice was supported by the evidence.

Supreme Court Decision

The Supreme Court ruled that the Appellate Court properly enforced the prenuptial agreement. The Supreme Court stated that “the circumstances of the parties at the time of dissolution accurately reflects their initial intention as expressed in the agreement, namely, two working adults with separate financial arrangements and assets, each protected from claims by the other.

Vanderbilt v. Vanderbilt, 2013 Ohio 1222

Facts of the Case

The parties’ 1999 marriage was the second for both. A few days before their wedding, the parties executed a prenuptial agreement, which included an attachment of financial disclosures. Both parties consulted with counsel prior to signing. The agreement provided, in part relevant here, that the parties intended to use a portion of their respective premarital assets to purchase their marital residence and that to “the extent either party contributes each party’s respective separate funds from the sale of a prior residence or from any other separate property, the parties agree that each of them shall be entitled to the return of the same percentage of equity he or she contributed, limited to down payment, lump-sum mortgage reduction, and the cost of capital improvements.”

Relevant State Law

Prenuptial agreements are valid if they have been entered into freely without fraud, duress, coercion, or overreaching; there was full disclosure, or full knowledge and understanding of the nature, value, and extent of the prospective spouse’s property; and the terms do not promote or encourage divorce. Gross v. Gross, 11 Ohio St. 3d 99 (1984). The provisions relating to maintenance or sustenance may lose their validity by reason of changed circumstances that render the provisions unconscionable as to one or the other at the time of the divorce. Additionally, the agreement that all salary, earnings, and other income made during the marriage was to be the separate property of the party acquiring it and, further, each party waived the right to spousal support.

Trial Court Decision

The trial court acknowledged Husband’s $160,000 contribution to the purchase of the marital home from the proceeds of the sale of his premarital residence and divided the balance of the equity evenly. The court also ruled that the prenuptial agreement was valid but did not control the determination of spousal support. The court found that a prenuptial agreement is merely one of the statutory factors to be considered in determining its spousal support award.

Both parties appealed the decision. Wife appealed the trial court’s ruling, among others, that there was a full financial disclosure of the parties’ assets, and the prenuptial agreement was not procured through fraud, duress, or overreaching. Wife maintained that the court should not have found the agreement to be valid. Among the Husband’s issues were the trial court’s disregard of the prenuptial agreement’s provisions regarding the division of the equity of the marital home and the court’s failure to do an analysis of whether the spousal provisions of the agreement were conscionable.

Appellate Court Decision

The Court of Appeals upheld the trial court decision with regard to Wife’s arguments. The Court ruled that the exhibit attached to the agreement fulfilled the requirement for full financial disclosure because Wife acknowledged that she did not know whether the exhibit was a full disclosure because she had not looked at it. The Court further found that the agreement was not the result of fraud or duress because Wife had a meaningful opportunity to consult with counsel prior to executing the agreement. In fact, Wife insisted on signing despite counsel advising her on two occasions not to sign.
The Court of Appeals reversed the trial court on both of Husband’s counts. Based on Wife’s testimony that she did not contribute any of her separate income or proceeds from the sale of her premarital residence toward the purchase of the marital home, the Court ruled that the trial court’s division of the equity in the marital home was invalid under the terms of the premarital agreement. Further, the Court of Appeals found that the trial court should not have awarded spousal support to Wife absent a finding that the terms of the prenuptial agreement were unconscionable at the time of the divorce. The matter was remanded for further consideration because “an antenuptial agreement does not control spousal support. It may fall within one of the statutory other factors for the court to consider.”

Conclusion

When drafting prenuptial agreements, it is imperative to understand the relevant state laws, to anticipate the respective future financial positions of the parties, and to draft the agreements so that there is no ambiguity as to the terms.

Mary V. Ade is a Director in the Dispute Advisory & Forensic Services Group at Stout Risius Ross (SRR). She has over 20 years of experience in the field of Family Law. Ms. Ade can be reached at +1.248.432.1336 or made@srr.com.

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