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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001040-MR

STALLARD B. BOYD

APPELLANT

v. APPEAL FROM FLOYD FAMILY COURT
HONORABLE JOHNNY RAY HARRIS, JUDGE
ACTION NO. 08-CI-00056

DIANA LYNN BOYD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND VANMETER, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Stallard Boyd appeals from a Floyd Family Court order, entered April 8, 2009, upholding the enforceability of a prenuptial agreement. Stallard claims that the prenuptial agreement was not enforceable

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

because it lacked full disclosure, was unconscionable, was not entered knowingly, and failed to include consideration. We disagree with Stallard's claims.

Two days prior to their marriage, on March 26, 2002, Stallard and Diana entered into a prenuptial agreement. On January 8, 2008, Diana petitioned the Floyd Circuit Court for dissolution of the marriage. During the divorce proceedings, Diana petitioned the court to enforce the prenuptial agreement. On April 8, 2009, the trial court granted the petition. Stallard moved the court to alter, amend or vacate the order, and his motion was denied on May 5, 2009. This appeal follows.

Prenuptial agreements are contracts to dispose of property in the event a marriage terminates due to dissolution or death. In order to be enforceable, prenuptial agreements, or antenuptial agreements, are subject to three limitations: (1) full disclosure of property and income must be made by each party; (2) the agreement must not be unconscionable at the time of enforcement; and (3) the agreement may only apply to property disposition and maintenance. *Edwardson v. Edwardson*, 798 S.W.2d 941, 945-46 (Ky. 1990).

First, Stallard claims that the prenuptial agreement is unenforceable because it lacked full disclosure. Specifically, Stallard argues that the agreement should have contained a list of assets owned by each spouse. A list of assets is not required. Full disclosure is not intended to be a rigid hoop through which parties

must jump. Instead, the requirement exists to provide protection. “Before parties should be bound by agreements which affect their substantial rights upon dissolution of marriage, it should appear that the agreement was free of any material omission or misrepresentation.” *Id.* at 945.

Although Stallard suggests that material misrepresentations and omissions existed, he failed to explain what was misrepresented. Mere allegations are insufficient. Thus, Stallard failed to show that the agreement was executed without full disclosure.

Second, Stallard claims that the prenuptial agreement was unconscionable because all titles to real property were in Diana’s name. The prenuptial agreement states:

All property owned or acquired by any means after marriage shall be either “Separate Property” or “Joint Property”. The parties intend that they shall have the freedom to determine whether the real estate, intangible personal property, and, to the extent possible, tangible personal property shall be separate or joint by the manner in which title to the property is designated. Property, the title to which is in the name of one of the parties, shall be that party’s separate property. Property, the title to which is in the name of both parties, shall be joint property. Specifically, any bank account in one party’s name shall be separate property and any bank account in both party’s names shall be joint property.

Because the titles to all of the couples’ real property were in Diana’s name, under the agreement, all real property would be deemed as Diana’s separate, non-marital property.

In *Blue v. Blue*, 60 S.W.3d 585 (Ky. App. 2001), our Court explained the importance of determining conscionability at the time of enforcement.

Unlike parties who execute a property settlement agreement at the end of a marriage, parties entering into a prenuptial agreement at the beginning of a marriage are sometimes not as likely to exercise the fullest degree of vigilance in protecting their respective interests. Often there will be many years between the execution of a prenuptial agreement and the time of its enforcement. It is, therefore, appropriate that the court review such agreements at the time of termination of the marriage, whether by death or by divorce, to ensure that facts and circumstances have not changed since the agreement was executed to such an extent as to render its enforcement unconscionable. [Citation omitted.]

Id. at 589.

Distribution of assets was clearly contemplated and detailed in the agreement. However, Stallard continued to have control over the distribution throughout the marriage. Knowing that title determined distribution, Stallard allowed Diana to hold the title to all of the parties' real property. Obviously, the agreement's enforcement results in an unequal distribution of the assets.

Nonetheless, we find that the enforcement was conscionable based upon the agreement and Stallard's actions during the parties' marriage.

Third, Stallard claims that the prenuptial agreement was unenforceable because it was not entered knowingly. As with all contracts, prenuptial agreements must be entered into freely, knowingly, and voluntarily. The attorney who prepared the agreement did not provide legal advice or counsel.

Therefore, Stallard argues that the parties did not enter the agreement knowingly.

We disagree.

Stallard's failure to seek legal advice does not necessarily render the agreement unenforceable. Stallard had ample opportunity to consult with an attorney. Stallard did not provide an explanation for signing the agreement without understanding it. Our review of the agreement indicates that it was written in plain language. We find no evidence that suggests that Stallard did not knowingly enter into the prenuptial agreement.

Finally, Stallard claims that the prenuptial agreement was not supported by consideration. However, the purpose of the agreement was clearly to induce marriage and to allow the parties to retain separate and distinct estates in the event of dissolution. We conclude that adequate consideration thus existed.

Accordingly, we affirm the Floyd Circuit Court's order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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