

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Kevin C. Gannon

Court of Appeals No. WD-09-024

Appellee

Trial Court No. 2007DR0201

v.

Janice L. Snyder a/k/a
Janice L. Snyder Gannon

DECISION AND JUDGMENT

Appellant

Decided: January 29, 2010

* * * * *

Rahn M. Huffstutler, for appellee.

Henry B. Herschel, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal of a judgment of the Wood County Court of Common Pleas, Domestic Relations Division, that granted the parties a divorce and considered and applied their antenuptial agreement in orders providing for the disposition of property and

their economic interests. Janice Snyder, formerly known as Janice Gannon, is appellant. Kevin L. Gannon is appellee. Janice asserts one error on appeal:

{¶ 2} "Assignment of Error No. 1: The trial court erred by changing the terms of the clear, unambiguous and valid Antenuptial Agreement."

{¶ 3} The parties entered into an antenuptial agreement on May 27, 2004, and married on June 25, 2004. At trial, Kevin did not claim that the antenuptial agreement was invalid. Rather, he stipulated that the agreement was valid. In its judgment, journalized on February 26, 2009, the trial court ruled that the agreement was valid and binding on the parties. Janice argues in this appeal that the trial court violated the antenuptial agreement when it imposed an obligation to pay interest on an interest free loan between the parties that was made prior to the marriage.

{¶ 4} The case was tried in hearings conducted on June 30, 2008, August 27, 2008, and September 18, 2008. The magistrate filed her decision on October 29, 2008. The magistrate found that Kevin made an \$86,000 loan to Janice to refinance property located at 9800 Sheffield Road, Perrysburg, Ohio. The magistrate determined that the evidence conflicted on whether the refinancing was accomplished directly or whether Janice paid off credit debt first and then refinanced the home with an improved credit record. Some of the loan proceeds were used for home improvements.

{¶ 5} The 9800 Sheffield Road property was the marital residence. The magistrate found that, after the parties married, Kevin paid \$500 or more per month

towards the parties' living expenses. Trial testimony included testimony of work performed by Kevin on the residence during the marriage.

{¶ 6} It is undisputed that the loan occurred prior to the marriage and that the loan, including the terms of payment, were specifically discussed in the antenuptial agreement.

{¶ 7} The magistrate concluded:

{¶ 8} "22. The Antenuptial Agreement does not require the Defendant to sell the marital home within a specified period.

{¶ 9} "23. Since Plaintiff¹ no longer resides in the home or receives any benefit therefrom [sic], it is *equitable* that Defendant pay interest on the \$86,000.00 until it is repaid." (Emphasis added.)

{¶ 10} The magistrate ordered:

{¶ 11} "4. Defendant shall pay the \$86,000 to Plaintiff at the time the home is sold pursuant to the Antenuptial Agreement. Until the home is sold, Plaintiff shall pay interest on the \$86,000.00 at the statutory rate on a quarterly basis, effective June 30, 2008."

{¶ 12} Janice filed an objection to the magistrate's decision and asserted that the imposition of an obligation to pay interest on the loan until the property is sold violated the terms of the antenuptial agreement. The trial court ruled on the objection in its judgment of February 26, 2009. In its judgment, the trial court approved the imposition

¹Kevin was plaintiff in the proceedings below.

of an obligation to pay interest on the loan but held that Janice was not required to pay the accruing interest until the property was sold:

{¶ 13} "It was inappropriate for the Magistrate to modify the terms of the Antenuptial Agreement to provide for interest, when the parties had reached an agreement that nothing was to be paid until the house was to be sold. The Court finds however that interest should be accruing at the statutory rate from the date of the final decision of the Magistrate until the amount is paid, but no interest is payable until the house is sold. At that time the house is sold both the principle amount of \$86,000.00 and interest are to be paid by the Defendant to the Plaintiff."

Antenuptial Agreement

{¶ 14} The parties identified the purposes served by their antenuptial agreement at paragraph five of the agreement:

{¶ 15} "5. The purposes of entering into this Agreement are to establish property rights during the marriage; to provide for the disposition of property at death; and to provide for the disposition of the property in the event of the termination of the marriage other than by death."

{¶ 16} Paragraph seven of the agreement concerns separate property owned by the parties. Listings of separate property owned by the parties are attached to the agreement and marked exhibits "A" and "B." Pursuant to paragraph seven, Exhibit "A" is a listing of separate property that Janice claimed and Kevin acknowledged was owned solely by

Janice as her separate property. Real property owned by Janice and located at 9800 Sheffield Rd., Perrysburg, Ohio is listed on Exhibit "A" as separate property of Janice.

{¶ 17} Under paragraph 11 of the agreement, the parties addressed the issue of property rights to separate property as well as property rights with relation to enhancements to the separate property occurring during the marriage:

{¶ 18} "11. The parties mutually represent that they desire that all property presently owned by each of them and all income, proceeds, inheritance or other property coming to each therefrom during the marriage be and remain the respective property of each except as otherwise stipulated herein or by separate contract. Any enhancement in value of either Kevin's or Janice's sole and separate property shall not be deemed to give rise to any property interests in the other party."

{¶ 19} The terms of the \$86,000 loan by Kevin to Janice are discussed at paragraph 13:

{¶ 20} "13. The debts and obligations contracted or incurred by each party prior to the marriage between the parties are to be paid by the party who has contracted same and the other party shall have no obligation with respect thereto. *However, Janice is indebted to Kevin in the amount of \$86,000 which will be paid to Kevin once 9800 Sheffield Road, Perrysburg, Ohio, is sold, or earlier, as the parties agree.* Provided, however, that in the event Kevin, pursuant to paragraph 14 hereof, continues to reside in such property after the death of Janice, and Kevin fails to reimburse the trustee of the Janice Snyder 2004 Revocable Trust, pursuant to paragraph 14 hereof, then the amount of such advances,

together with interest thereon, will be deducted from the amount payable Kevin under the preceding sentence. Such interest shall be at the applicable federal rate for long-term obligations, in effect on the first day of each year during which such advances are outstanding."

{¶ 21} At paragraph 15, Kevin expressly waived rights in the property of Janice arising by reason of the marriage:

{¶ 22} "15. Kevin hereby releases and relinquishes all rights in the property and estate of Janice that he might have by reason of their marriage, or by reason of divorce, dissolution, legal separation, annulment or other termination of their marriage, whether by way of spousal support equitable division of marital and separate property and/or distributable award pursuant to Ohio Revised Code §3105.171 * * *."

{¶ 23} "An antenuptial agreement is a contract entered into between a man and a woman in contemplation, and in consideration, of their future marriage whereby the property rights and economic interests of either the prospective wife or husband, or both, are determined and set forth in such instrument." *Gross v. Gross* (1984), 11 Ohio St.3d 99, 102. The Supreme Court of Ohio has recognized that "[s]uch agreements are valid and enforceable (1) if they have been entered into freely without fraud, duress, coercion, or overreaching; (2) if there was full disclosure, or full knowledge and understanding of the nature, value and extent of the prospective spouse's property; and (3) if the terms do not promote or encourage divorce or profiteering by divorce." *Id.* at paragraph two of the syllabus.

{¶ 24} As the validity of the antenuptial agreement is not in dispute, the issue presented is the interpretation of the agreement. Antenuptial agreements are a type of contract and, generally, Ohio law with respect to contracts applies to such agreements. *Fletcher v. Fletcher* (1994), 68 Ohio St.3d 464, 467. Contracts are interpreted to give effect to the intent of the parties. *Skivolocki v. E. Ohio Gas Co.* (1974), 38 Ohio St.2d 244, at paragraph one of the syllabus. "When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849 ¶ 11. Where the terms of an antenuptial agreement are clear and unambiguous, its interpretation is a matter of law. *Avent v. Avent*, 166 Ohio App.3d 104, 2006-Ohio-1861, ¶ 16; *Reams v. Reams*, 6th Dist. No. L-04-1239 and L-04-1276, 2005-Ohio-5264, ¶ 21.

{¶ 25} The antenuptial agreement identifies an obligation for Janice to pay the \$86,000 principal amount on the loan at the time of sale of the Sheffield Road property. It does not set forth any provision requiring payment of interest on the loan principal. We do not interpret the trial court's judgment to be based on any finding that the parties had in fact agreed, in their loan contract, for Janice to pay interest on the loan.

{¶ 26} Kevin argues first that the Sheffield Road property was not the separate property of Janice because ownership had been transferred to the Janice Snyder 2004 Revocable Trust. The antenuptial agreement, however, expressly recognized that ownership of the property would transfer to the revocable trust and nevertheless was clear

and unambiguous in treating the Sheffield Road property as the separate property of Janice.

{¶ 27} Furthermore, R.C. 3105.171(A)(6)(a)(v) allows "for property to be excluded from marital property under the terms of a valid antenuptial agreement." *Todd v. Todd* (May 4, 2000), 10th Dist. No. 99AP-659; *Avent v. Avent*, at ¶ 15. The terms of the antenuptial agreement here unambiguously preclude consideration of the Sheffield Road residence as marital property.

{¶ 28} Kevin argues that the evidence at trial established that he had expended substantial time and labor in improving and maintaining the Sheffield Road property and that he had paid \$500 a month or more towards living expenses. He claims that under *Worthington v. Worthington* (1986), 21 Ohio St.3d 73 analysis, the court was authorized to apportion the value of appreciation of the asset as a marital asset. Under paragraph 11 of the antenuptial agreement, however, the parties agreed that "any enhancements in value of either Kevin's or Janice's sole and separate property shall not be deemed to give rise to any property interests in the other party."

{¶ 29} We agree with appellant that the trial court's judgment imposing a duty to pay interest on the premarital loan from Kevin to Janice conflicts with the clear and unambiguous terms of the antenuptial agreement. Considering the antenuptial agreement as a whole, the clear and unambiguous intent of the parties was to preclude any claims for rights arising out of separate or marital property whether by way of claims for spousal

support, equitable division of marital and separate property and/or distributable award pursuant to R.C. 3105.171.

{¶ 30} We find Janice's Assignment of Error No. 1 well-taken.

{¶ 31} We reverse the judgment of the Wood County Court of Common Pleas, Domestic Relations Division, and remand this case for further proceedings consistent with this decision and judgment. Costs are taxed to appellee pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.