

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 22, 2014 Session

GUY HAWKINS v. DIANA LE-HAWKINS

Appeal from the Chancery Court for Coffee County
No. 2012-CV-380 Vanessa Jackson, Judge

No. M2013-02068-COA-R3-CV - Filed September 26, 2014

The principal issue in this appeal is whether a marital dissolution agreement the parties entered into while Wife's complaint for a legal separation was pending was enforceable in an action husband commenced for an absolute divorce six days after Wife voluntarily dismissed her complaint. In Husband's subsequent action, from which this appeal arises, Wife contested the divorce and challenged the validity of the MDA claiming it was not entered into in contemplation of Husband filing this action; she also contended it was invalid because Husband did not disclose all of his assets. The trial court found the MDA was valid because it was entered into without fraud or duress and with full knowledge of all the parties' assets, granted a divorce, and divided the marital estate pursuant to the MDA. Wife appeals, contending that the MDA does not comply with Tenn. Code Ann. § 36-4-103, which expressly directs that "a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if a properly executed marital dissolution agreement is presented to the court." To constitute a properly executed marital dissolution agreement, an MDA must be entered into in compliance with Tenn. Code Ann. § 36-4-103(a)(2), which expressly requires, *inter alia*, that an MDA be entered into in regards to a pending divorce or in contemplation of one being filed. Wife claims that the MDA was entered into in regards to a legal separation, and not in contemplation of divorce. The language of the MDA clearly reveals that the parties expressly contemplated a divorce and that the agreement would be incorporated in any decree of divorce that may ensue. Moreover, the evidence does not preponderate against the trial court's finding that the parties entered into the MDA without fraud or duress and with full knowledge of the parties' assets; therefore, the MDA constitutes a properly executed marital dissolution agreement for purposes of this action and is a valid and binding agreement upon the parties. Accordingly, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Robert L. Huskey, Manchester, Tennessee, for the appellant, Diana Le-Hawkins.

Eric J. Burch, Manchester, Tennessee, for the appellee, Guy W. Hawkins.

OPINION

In February 2011, Diana Le-Hawkins (“Wife”) filed a complaint for legal separation against Guy Hawkins (“Husband”).¹ Wife’s attorney prepared a marital dissolution agreement (“MDA”) in contemplation of the filing of her complaint, which Wife signed on January 25, 2011; Husband signed the MDA without the assistance of counsel on March 4, 2011, while the action was pending.

The MDA provided, in pertinent part, that the parties entered the agreement “in consideration of their mutual promises, and the filing by the Wife of a Complaint for Divorce on the grounds of irreconcilable differences.” It further stated: “Should a final decree be granted, this Marriage Dissolution Agreement shall be incorporated into said decree as a full and final settlement of all property rights of the parties” and that “this Marriage Dissolution Agreement shall be incorporated in any Decree of Divorce entered between the parties.”

The MDA divided the parties’ real property, personal property, vehicles, debts, and retirement accounts, and set alimony for Wife of \$800 per month for one year with an additional lump sum of \$2,500 to be paid to her by Husband at the time the divorce was final.

After filing the MDA with the trial court, and although Wife’s complaint specifically sought a legal separation, not an absolute divorce, Wife’s attorney submitted an order for absolute divorce, which incorporated the MDA in the Final Decree. The trial court approved the final order, and it was entered. Wife then hired substitute counsel who filed a motion to set aside the decree on two grounds: that it was not the relief requested in the complaint, and that Wife discovered Husband had additional assets, including his military and employer pensions which were not addressed in the MDA. Husband filed a response opposing the motion. Following a hearing on the motion, the trial court determined “the Decree that was submitted and entered is inconsistent with the pleading and relief sought,” and set aside the divorce. On the same day, Wife voluntarily dismissed her complaint. Because Husband had not filed a counterclaim for divorce and no other claims were pending, an order was entered dismissing the case in its entirety.

Six days later, on November 8, 2012, Husband commenced this action by filing a complaint for an absolute divorce on the grounds of irreconcilable differences, relying on the

¹The parties married on March 17, 1997, and they had no children together.

stipulation of that ground in the 2011 MDA. Wife filed an answer and counter-complaint, contesting the divorce, and alternatively contending the MDA was not valid because Husband had not disclosed all of his retirement benefits; she also requested that the trial court make a fair and equitable division of the parties' assets, seeking alimony, attorney's fees, and court costs.

After the parties engaged in discovery, Wife amended her answer to allege that Husband misled her as to assets and their value prior to signing the MDA. Thereafter, the trial court informed the parties that it would conduct an evidentiary hearing to determine whether the MDA was enforceable.

At a hearing on May 28, 2013, both Husband and Wife testified concerning the MDA. Following the hearing, the trial court found that Wife was aware of the parties' marital assets and their values, including all of Husband's retirement benefits and pensions and that the parties had contemplated these items in the MDA when the agreement made reference to "retirement accounts." Furthermore, the trial court found Wife was not under duress or subject to undue influence when she signed the MDA. Finding the MDA to be a valid and enforceable agreement, the trial court concluded that the MDA was binding on the parties, approved the MDA, and declared the parties divorced on the grounds of irreconcilable differences. The divorce decree adopting the MDA was entered on August 26, 2013. Wife filed a timely appeal.

STANDARD OF REVIEW

The standard of review of a trial court's findings of fact is *de novo* and we presume that the findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *See Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). Issues of law are reviewed *de novo* with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

ANALYSIS

Wife contends the MDA is unenforceable for purposes of this divorce action because it inequitably divided the marital assets and was not entered into in compliance with subsection (a)(2) of Tenn. Code Ann. § 36-4-103. Specifically, she contends the MDA did

not reference the underlying divorce action from which this appeal arises, and it was not entered into in contemplation of Husband filing his complaint for an absolute divorce.

A marital dissolution agreement is a contract; thus, it is generally subject to the rules governing construction of contracts. *Johnson v. Johnson*, 37 S.W.3d 892, 896 (Tenn. 2001); *Honeycutt v. Honeycutt*, 152 S.W.3d 556, 561 (Tenn. Ct. App. 2003). Because “the interpretation of a contract is a matter of law, our review is de novo on the record with no presumption of correctness in the trial court’s conclusions of law.” *Honeycutt*, 152 S.W.3d at 561 (citations omitted).

Marital dissolution agreements “may be enforceable as a contract even if one of the parties withdraws consent prior to the entry of judgment by the trial court, so long as the agreement is otherwise a validly enforceable contract.” *Barnes v. Barnes*, 193 S.W.3d 495, 499 (Tenn. 2006) (citing *Matthews v. Matthews*, 148 S.W.2d 3 (Tenn. 1940)). In *Matthews*, the wife filed a complaint for divorce, and alleged that the two separation agreements she entered into with her husband were fraudulent and void. *Matthews*, 148 S.W.2d at 5-6. Despite her repudiation of the agreement, this court held that the separation agreements were valid and enforceable absent a clear showing of fraud or coercion, *id.* at 5-6, a holding which the Supreme Court upheld in *Barnes v. Barnes*, 193 S.W.3d 495, 499 (Tenn. 2006).

In the present case, the trial court found that Wife was not subject to duress, undue influence or overreaching. Moreover, the court found that Wife had “knowledge, independently and through discussion with her Husband, of the full nature, extent and value of their assets and debts.” In fact, Wife’s attorney prepared the MDA, and Wife signed it on January 25, 2011. Husband, who was not represented by an attorney at that time, signed the MDA on March 4, 2011, while Wife’s action was pending. Moreover, after the execution of the MDA, the parties acted in accordance with the division of the marital estate and divided it accordingly, going their separate ways with the assets they were awarded in the MDA. Furthermore, Husband paid Wife the sums mandated in the MDA; thus, the parties acted in reliance on the MDA. Significantly, the trial court also found Husband’s testimony credible regarding Wife’s knowledge of the extent and value of the parties’ marital assets. Based on this and other evidence within the record, we find that the evidence does not preponderate against these findings.

Wife next contends that the MDA is unenforceable because it does not comply with Tenn. Code Ann. § 36-4-103(a)(2); she contends the MDA was not entered into in contemplation of an absolute divorce. The statute reads in pertinent part:

In lieu of service of process, the defendant may enter into a written notarized marital dissolution agreement with plaintiff that makes *specific reference to a*

pending divorce by a court and docket number, or states that the defendant is aware that one will be filed in this state and that the defendant waives further service and waives filing an answer to the complaint[.]

(Emphasis added).

Wife insists she entered into the MDA in contemplation of filing a complaint for a legal separation; however, the express language of the MDA conflicts with her testimony. The MDA expressly states that the parties contemplated an absolute divorce. It reads in pertinent part that the parties were entering into the agreement “in consideration of their mutual promises, *and the filing by the Wife of a Complaint for Divorce on the grounds of irreconcilable differences.*” (Emphasis added). The MDA also provides that Husband shall pay Wife a lump sum of \$2,500 at the time the divorce is made final. Moreover, Paragraph 1 of the Miscellaneous section states, “Should a final decree be granted, this Marriage Dissolution Agreement shall be incorporated into said decree as a full and final settlement of all property rights of the parties.” Paragraph 5 of the Miscellaneous section states that “this Marriage Dissolution Agreement shall be incorporated in any Decree of Divorce entered between the parties.”

Therefore, the parties clearly contemplated an action for absolute divorce in which the MDA would be incorporated as a full and final settlement of all property rights. Accordingly, the agreement is an enforceable contract despite Wife’s attempt to repudiate the same.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellant, Diana Le-Hawkins.

FRANK G. CLEMENT, JR., JUDGE