

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000161-MR

TARA LYN GARRITSON
F/K/A TARA LYN TIMMONS

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 06-CI-00164

GARY MORTIMER TIMMONS

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: CLAYTON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Tara Lyn Garritson, formerly known as Tara Lyn Timmons, brings this appeal from a December 21, 2006, Order of the Lyon Circuit Court, setting aside a prenuptial agreement as void. We reverse and remand.

Tara and Gary Mortimer Timmons were married June 24, 2006. Two days prior to the marriage, the parties entered into a “Pre-Marital Agreement”

(antenuptial agreement). Therein, Tara essentially waived any rights she had in Gary's property, and, relevant to this appeal, Gary agreed to pay Tara "2,500.00 per month for a total of 6 months for separate living expenses" in the event of divorce. Approximately two months after the marriage, the parties separated, and Gary filed a petition for dissolution of marriage on August 29, 2006.

A decree of dissolution of marriage was entered in the Lyon Circuit Court on December 4, 2006. The decree dissolved the parties' marriage and restored Tara's maiden name but reserved all other issues for future adjudication. On December 21, 2006, the court conducted an evidentiary hearing on remaining issues. Following the hearing, by order entered December 21, 2006, the court concluded:

This matter coming before the Court on [Gary's] Motion to Invalidate Antenuptial Agreement and [Tara's] Motion to Enforce the Pre-Marital Agreement, and [Gary] and [Tara] appearing with their respective counsel of record and presented evidence, and the Court having stated findings of fact on the record, and being otherwise sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED,
that the maintenance provision in the pre-marital agreement is hereby set aside as unconscionable and against public policy.

This appeal follows.

Tara contends the circuit court erred by determining that the maintenance provision of the parties' antenuptial agreement was "unconscionable and against public policy." We shall initially consider whether the maintenance

provision of the antenuptial agreement was void as against public policy and then consider whether such provision was unconscionable.

It is well-established that antenuptial agreements are enforceable in Kentucky. *Gentry v. Gentry*, 798 S.W.2d 928 (Ky. 1990). It is equally clear that maintenance provisions are also recognized as enforceable in such agreements. *Edwardson v. Edwardson*, 798 S.W.2d 941 (Ky. 1990). As a general rule, an antenuptial agreement is valid and enforceable, provided there has been full disclosure between the parties, the agreement is not unconscionable at the time enforcement is sought, and the agreement was not obtained through fraud, duress, or mistake. *Id.* As a maintenance provision is not void against public policy, we hold the circuit court erred as a matter of law by concluding that the maintenance provision in the parties' antenuptial agreement was void as against public policy.¹

The circuit court's order does not address the disclosure limitation and thus we must assume the parties adequately disclosed their financial condition to each other prior to the marriage as stated in the agreement. Thus, our review is limited to whether the maintenance provision of the antenuptial agreement was void as unconscionable. Unconscionability is addressed in prongs two and three of the three-prong analysis enunciated in *Gentry* as follows:

(2) Is the agreement unconscionable? (3) Have the facts and circumstances changed since the agreement was

¹ The circuit court erroneously relied upon *Lane v. Lane*, 202 S.W.3d 577 (Ky. 2006) to support its finding that the maintenance provision of the antenuptial agreement was void as against public policy. In *Lane*, the Supreme Court upheld the trial court's finding that an antenuptial agreement was unconscionable where it completely barred maintenance. *Id.*

executed so as to make its enforcement unfair and unreasonable?

Gentry, 798 S.W.2d at 936. In the case *sub judice*, the circuit court held that the maintenance provision of the antenuptial agreement was “unconscionable” because the marriage was of a short duration – only “two months.” Because it is unclear whether the circuit court voided the antenuptial agreement under prong two or three of the *Gentry* analysis, we shall address both.

Under the second prong of the *Gentry* analysis, an antenuptial agreement is void if its provisions were unconscionable at the time the agreement was executed. *Gentry*, 798 S.W.2d 928. In this case, the antenuptial agreement applies to both Gary and Tara, and reflects that each had made a full and complete disclosure of their respective financial situations. *See id.* The parties further acknowledge in the agreement that they had the opportunity to consult independent counsel and that the agreement represented the parties’ entire agreement. The fact that the agreement provided for six months of maintenance does not make the agreement unconscionable on its face. If anything, this reflects the parties did not foresee a lengthy marriage. We simply can find nothing in the record that reflects the agreement was unconscionable when executed. Additionally, we note that Gary does not argue that the agreement was unconscionable when executed, rather when enforcement is sought, which is the third prong of the *Gentry* analysis. *See id.*

Under the third prong of *Gentry*, a provision of an antenuptial agreement is invalid where the “facts and circumstances [have] changed since the agreement was executed.” *Id.* In this case, the antenuptial agreement was executed by the parties on June 22, 2006, and Tara sought to enforce the agreement on September 5, 2006, a period of only some two and one-half months. Considering the short period of time between execution of the agreement and enforcement thereof, we believe that the type of change in facts and circumstances contemplated under the third prong of the *Gentry* analysis could not have occurred in this case. *See id.* The type of changed facts and circumstances contemplated under the third prong are often dependent upon the passage of time:

Often there will be many years between the execution of an antenuptial 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 insure that facts and circumstances have not changed since the agreement was executed to such an extent as to render its enforcement unconscionable.

Gentry, 798 S.W.2d at 936. In this case, there is absolutely no proof in the record that the facts and circumstances have changed from the date of marriage to the date of termination, other than the parties wanting a divorce.

There are other factors that weigh against setting aside the antenuptial agreement. Tara argues in her brief that Gary proposed and drafted the agreement. Gary does not dispute this in his counter statement of the case. The agreement plainly states that prior to the signature lines in enlarged print the agreement was to

be “binding” on the parties. It is apparent from the limited record that Gary agreed to pay six months of maintenance in the event of divorce. Had Gary wanted a minimum marriage duration to trigger the maintenance obligation, he could easily have drafted the same in the agreement.

Thus, there being no change of circumstances documented in the record before us, there is no legal basis to find the agreement unconscionable. Again, standing alone, the fact that the marriage only lasted two months does not support a finding of unconscionability.

Accordingly, we hold that the maintenance provision of the antenuptial agreement is valid and enforceable and the circuit court erred as a matter of law by holding otherwise.

For the foregoing reasons, the Order of the Lyon Circuit Court is reversed and this cause is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert C. Manchester
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BRIEF FOR APPELLEE:

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