

STATE OF MICHIGAN  
COURT OF APPEALS

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VERLADIA REED,

Plaintiff-Appellee,

v

GREGORY J. REED,

Defendant-Appellant.

FOR PUBLICATION

February 8, 2005

9:05 a.m.

No. 248895

Wayne Circuit Court

LC No. 00-03452-DM

Official Reported Version

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Before: Markey, P.J., and Fitzgerald and Owens, JJ.

FITZGERALD, J. (*dissenting*).

I respectfully disagree with the majority's conclusion that the trial court erred by declaring the parties May 1975 prenuptial agreement null and void and that the error affected many of the trial court's other rulings. Thus, I would affirm the pretrial order granting partial summary disposition to plaintiff. I would also affirm the judgment of divorce because the trial court's findings of fact regarding the marital estate are not clearly erroneous and because the distribution of the marital property was fair and equitable.

The May 15, 1975, prenuptial agreement was entered into at a time when prenuptial agreements in contemplation of divorce were considered to be against public policy. See *Scherba v Scherba*, 340 Mich 228, 231; 65 NW2d 758 (1954).<sup>1</sup> The prenuptial agreement at issue in this case stated in its entirety:

1. Release of dower. Gregory J. Reed shall hold all real and personal property which he now owns or may hereinafter acquire free from any claims of dower, inchoate or otherwise, on the part of Verladia Thomas and this agreement shall evidence the right of Gregory J. Reed to convey any of his real estate owned or acquired hereinafter free from any claims of dower. At the request of Gregory J. Reed, Verladia Thomas shall execute, acknowledge and deliver such other instruments as may be reasonably required to accomplish the transfer by Gregory

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<sup>1</sup> Prenuptial agreements that contemplated divorce were not recognized in Michigan until 1991. *Rinvelt v Rinvelt*, 190 Mich App 372, 382; 475 NW2d 478 (1991).

J. Reed of any real property free from any such claims of dower and to divest any claim of dower in such property.

2. In the event of divorce between Gregory J. Reed and Verladia Thomas, Gregory J. Reed shall be awarded the residence at 2460 Burns, Ave., Detroit, Michigan.

3. Separate Property. Except as herein provided, each party shall have complete control of his or her separate property, and may enjoy and dispose of such property in the same manner as if the marriage had not taken place. The foregoing shall apply to all property now owned by either of the parties and to all property which may hereafter be acquired by either of them in an individual capacity.

4. Consideration. The consideration for this agreement is the mutual promises herein contained and marriage which is expected to take place between the parties.

5. Effective date. This agreement is effective from the date hereof and inures to the benefit of the parties, heirs, executors and administrators.

At the time of the agreement, plaintiff had been working for three years as an engineer, and defendant was a recent law school graduate. Their net worth at the time of the 1975 marriage was less than \$20,000.

Over the course of the twenty-five year marriage, the parties raised two children and accumulated assets in excess of \$5 million. Plaintiff filed this divorce action in October 2000. Defendant, relying on the 1975 prenuptial agreement, contended that he was entitled to everything he purchased over the course of the parties' marriage. The trial court determined the marital estate to consist of the following property:

- (1) A condominium in Harbor Springs, Michigan, valued at \$110,595.
- (2) Defendant's one-half interest in an office building located at 1201 Bagley, Detroit, valued at \$175,000.
- (3) Stocks and other investments valued at \$21,856.
- (4) The net proceeds of the condemnation of the property at 225 Garfield, Detroit, valued at \$887,117.
- (5) Detroit Edison pension annuities and worker's compensation valued at \$172,845.
- (6) A SEP and IRAs in the amount of \$215,874.
- (7) Savings and miscellaneous in the amount of \$7,900.

(8) 383.92 acres of land located in Springfield Township, Oakland County, with an estimated value between \$2.9 million and \$3 million if sold undeveloped and, if sold developed, between \$8 million and \$10 million.

(9) The marital residence at 2460 Burns, Detroit, valued at \$543,449 according to its 2002 state equalized valuation or \$450,000 as appraised.

(10) Defendant's law practice with a value estimated at \$55,059 because defendant did not provide expert evaluator John Stockdale necessary financial information.

(11) Plaintiff's business, VTR Consulting Inc., valued at \$950 by Mr. Stockdale.

(12) Malcolm X papers, valued by the parties at \$125,000.

(13) Plaintiff's incurred debt in the amount of \$180,000.

Defendant maintained that these assets, with the exception of items 5 and 11, were acquired by him as his separate property.

Plaintiff moved for partial summary disposition, contending that the prenuptial agreement was unenforceable, in part because of the change in the parties' circumstances between the time the agreement was signed and the time of the divorce. She maintained that it would be unfair and unconscionable to enforce the agreement as interpreted by defendant.

Following a hearing, the trial court granted plaintiff's motion, stating in part:

However, I think the real reason why I have to strike down this agreement is the criteria, the third criteria [sic] mentioned and that is that in determining the fairness of [the] antenuptial agreement, the issue is whether the facts and circumstances have changed since the agreement was executed making its enforcement unfair and unreasonable and that's from *Brooks v Brooks* [, 733 P2d 1044 (Ala, 1987)].

Under *Brooks* analysis, the issue is not the fairness of the agreement when it was signed but on whether the facts and circumstances have changed since the agreement was executed. And I think there's an unpublished case that discussed this very well and that's *Kuziemko* [*v Kuziemko* unpublished opinion per curiam of the Court of Appeals, issued December 4, 2001 (Docket No. 212377)]. . . . [T]he Court refers to cases from other jurisdiction[s] and it states the case[s] that discuss prenuptial agreements in other jurisdictions lead to the conclusion that when Courts talk about fairness in the setting of a prenuptial agreement, they're usually not talking about an entirely subjective open-ended concept that allows Judges to renegotiate contracts and substitute their own judgment for the agreement of the parties. Rather, what other Courts are really concerned about is foreseeability.

Continuing, for the change of circumstances to be unanticipated, the event must not have been reasonably foreseen by the parties prior to or at the time of making the agreements. The Court went on to state our Court should enforce

specific terms of the agreement if the circumstances at the time that the marriage ends were what the parties foresaw at the time they entered the prenuptial agreement. And in this case, given the duration of the marriage, 26 years, the age and financial status of the parties at the time they signed the agreement, and the significant changes in the financial status of both parties since that time, I believe it would be both unfair and unconscionable to enforce an agreement executed 26 years earlier under far different facts and circumstances and certainly with a marital estate that could not have possibly been foreseen to have grown to the proportion that it has by these parties.

Defendant argues that the trial court improperly invalidated the prenuptial agreement on the ground that circumstances have changed so that it is unfair and unreasonable to enforce the agreement at the time of divorce. *Booth v Booth*, 194 Mich App 284, 288-289; 486 NW2d 116 (1992). I disagree.

Evidence was presented that the parties earned similar incomes during the duration of the marriage. Both parties worked full-time, but plaintiff was the primary caregiver for the parties' two children and had primary responsibility for running the household. In the evenings, plaintiff would work at home for defendant's law practice. The parties acquired various business interests that grew significantly over the years. Among the most valuable assets are the proceeds from a condemnation lawsuit involving the building that was purchased when defendant moved his law practice out of the marital home. The parties renovated the building to house the law practice as well as other entities defendant formed. Plaintiff assisted in the renovation by painting, installing flooring, stripping and staining paneling, upholstering furniture, making curtains, and laying bricks in the walk and driveway. The building was later the subject of an eminent domain action by the city of Detroit. Ultimately, the action was settled and the city agreed to pay the combined sum of \$1.25 million to the named defendants in that suit and the lienholders, including both plaintiff and defendant. The net proceeds to the parties were \$887,117.

This Court must consider the prenuptial agreement at the time it is to be enforced to determine whether the agreement is unfair and unreasonable as a result of unforeseeable changed circumstances. This case does not involve the typical situation in which one party brings significantly greater assets into the marriage. It would be unfair and inequitable to allow a party to leave a lengthy marriage with assets in excess of \$5 million, all of which were acquired during the marriage as a result of the family's labor, and to leave the other spouse, who not only contributed equally to the family income but also had responsibility for the children, with significantly less. The circumstances of the parties at the time of dissolution are so far beyond those contemplated by the parties when the agreement was made that enforcement of the agreement would work an injustice.

/s/ E. Thomas Fitzgerald