STATE OF MICHIGAN

COURT OF APPEALS

ERMA L. MULLER

Plaintiff-Appellee,

v

EDUARD MULLER,

Defendant-Appellant.

UNPUBLISHED
July 16, 1996

No. 172368
LC No. 91-412634-DO

Before: Neff, P.J., and Jansen and G. C. Steeh, III,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce in this matter. We affirm.

I

Defendant first argues that the trial court erred in failing to enforce the antenuptial agreement signed by the parties before their marriage in Quebec. We disagree.

The parties stipulated that the law of Quebec would govern the validity of the contract, and the law of Michigan would govern its enforceability. Although the trial court employed several different reasons for refusing to enforce the agreement, we find one dispositive.

In *Rinvelt v Rinvelt*, 190 Mich App 372; 475 NW2d 478 (1991), this Court examined the enforceability of antenuptial agreements in Michigan. In order to be enforceable, the following three criteria must be met:

1. Was the agreement obtained through fraud, duress or mistake, or misrepresentation or nondisclosure of material fact?

2. Was the agreement unconscionable when executed?

* Circuit judge, sitting on the Court of Appeals by assignment.

3. Have the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable? [*Id.* at 380.]

Here, the trial court determined, and we agree, that the contract was unconscionable when executed. The agreement provided that in exchange for plaintiff renouncing her dower rights, defendant was to pay plaintiff $30,000 at some point during the marriage, and donate $10,000 of household furniture and effects within ten years of the contract date. However, the contract also provides:

> It is expressly agreed, that should the future wife predecease her future husband, or should the marriage be dissolved by divorce or by any other means of competent authority . . . before complete payment of the above donations, the then unpaid portion of the said donations shall thereupon lapse and become null and void.

Accordingly, defendant was under no obligation to make the payments and donations to which he supposedly agreed; if he decided he did not want to make the payments, he could simply have sued for divorce. In other words, plaintiff gave up her dower rights in exchange for defendant's agreement to pay her certain sums of money if he felt like it. We find such a contract to be unconscionable.

Further, we disagree with defendant's argument that whether the contract is unconscionable is a question of its validity, and thus governed by the law of Quebec, rather than its enforcement, and thus governed by the law of Michigan. The trial court determined that the parties validly entered into the agreement under Quebec law, but simply refused to enforce it under Michigan law. Such a holding was consistent with the parties' stipulation.

In any event we find that the contract is inapplicable to the division of the parties' property under its own terms: No property is to be exchanged under the agreement in the event of a divorce. Accordingly, we conclude that the trial court properly refused to enforce the antenuptial agreement.

II

Defendant next argues that the trial court erred in dividing the property of the parties. We disagree.

Defendant argues that the trial court overvalued the marital estate by including his Civil Service Retirement System pension. In the alternative, defendant claims that the court undervalued the estate by failing to include plaintiff's social security entitlement. Defendant argues that because, as a federal employee, his pension is in lieu of social security, the court erred in including the pension in his estate because social security may not be properly considered as part of the marital estate. However, this Court in *Evans v Evans*, 98 Mich App 328; 296 NW2d 248 (1980), concluded that if an asset, including social security, has a present, ascertainable value, it may be included within the marital estate. The Court also determined, on the other hand, that if an asset is merely a contingent interest, it is not properly included within the estate. *Id.*

Here, defendant's pension had a present, ascertainable value, but no such value was placed on plaintiff's social security entitlement. Accordingly, we conclude that the trial court properly included defendant's pension in the calculation of the marital estate, and did not err in failing to include plaintiff's social security interest. Further, considering all of the relevant circumstances, we are not convinced that we would have reached a different result with regard to the marital property division in this case. *Lee v Lee*, 191 Mich App 73, 77-78; 477 NW2d 429 (1991). Thus the trial court's determination in that regard is affirmed.

III

Finally, defendant claims that the trial court erred in failing to find plaintiff at fault for the breakup of the marriage. We have reviewed the lower court record and conclude that the trial court's finding that neither party was at fault for the breakup of the marriage was not clearly erroneous. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992).

The trial court's judgment of divorce is affirmed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ George C. Steeh, III