

STATE OF MICHIGAN
COURT OF APPEALS

BETH WARSCO,

UNPUBLISHED
February 17, 1998

Plaintiff-Appellee,

v

No. 199606
Van Buren Circuit Court
LC No. 95-040925 DO

JOHN KEVIN WARSCO,

Defendant-Appellant.

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right a judgment of divorce which, in pertinent part, implemented the provisions of a post-nuptial separation agreement. Defendant contends that the agreement was void and unenforceable as a matter of law. We affirm.

An agreement made, not in recognition of an existing separation, but to effectuate and in contemplation of a future separation, is void as against public policy. *Day v Chamberlain*, 223 Mich 278, 281; 193 NW 824 (1923). However, the validity of such an agreement where a separation has already occurred is well established in Michigan jurisprudence. *Kull v Losch*, 328 Mich 519, 528; 44 NW2d 169 (1950). The agreement in this case was, by defendant's acknowledgment, made only after the parties had agreed to separate. Although defendant spent the night on which the agreement was signed in the same home as plaintiff, they did not cohabit, and defendant left in the morning to establish new living arrangements. No claim being made that the agreement is unjust or inequitable on its face, under these circumstances it is presumptively valid and was properly enforced by the circuit court. *In re Berner's Estate*, 217 Mich 612, 620-621; 187 NW 377 (1922). Defendant, an adult of sound mind when he signed the agreement was capable of entering into a valid agreement without legal advice. *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 92; 468 NW2d 845 (1991).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski