STATE OF MICHIGAN

COURT OF APPEALS

VINCENT P. LIZZIO,

Plaintiff-Appellant,

v

JENNIE D. LIZZIO,

Defendant-Appellee.

UNPUBLISHED
December 14, 1999

No. 203018
Wayne Circuit Court
LC No. 96-608409 DO

Before: Holbrook, Jr., P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce The basic issue on appeal is whether the trial court erred in enforcing an antenuptial agreement with regard to the property division in this case. We affirm.

I. Factual Background

The parties were married in 1975.[1] Prior to the marriage, they each signed an "Antinuptial [sic] Agreement" on March 22, 1975. In essence, the antenuptial agreement provided for each party's property to be separately held during the course of their marriage. The record amply reflects that the parties kept their property separate during the course of the marriage, including having separate savings accounts.[2]

Plaintiff was the only witness to testify at the evidentiary hearing below. Prior to plaintiff's testimony, his counsel acknowledged that he had signed the antenuptial agreement at issue. Plaintiff testified that he had never met defendant's lawyer before the antenuptial agreement was signed and that he signed the agreement without reading it or being told by defendant's lawyer what was contained in the agreement. Plaintiff said that he did not know what assets or property defendant owned at the time of the marriage. When asked if he knew why he was going to the lawyer's office, plaintiff replied:

> Well, in my mind, I thought a nuptial agreement, being love involved and stuff, I figured it was, you know, trying to get us together in certain - to keep our marriage - to go on with the marriage.

On cross-examination, plaintiff claimed that he thought the document he signed when he signed the antenuptial agreement "was some kind of a nuptial love story." The following questions and answers ensued:

> Q. What was your idea of what nuptial love story was?
>
> A. You know what I mean, when you agree you're in love.
>
> Q. What did you think that that document - explain to us as best you can?
>
> A. To me, I knew it by being something that, now, you're going to marry this woman - because her attorney was taking care of her husband and her, he says, now you got to just like a father would be seated, now, this is a nuptial and you guys are in love, so, and that's it. I went along with it. I didn't read it.

The trial court ultimately held that the antenuptial agreement was enforceable and, accordingly, provided in the judgment of divorce for the parties to retain their respective assets.

II. Standard of Review

A trial court's factual findings in a divorce case are reviewed for clear error, while its property division will be affirmed unless a reviewing court is left with the firm conviction that the division was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

III. Sufficiency of the Trial Court's Factual Finding

Plaintiff asserts that the trial court's findings of fact regarding the validity of the antenuptial agreement were insufficient because the trial court did not comply with MCR 3.210(D), thereby precluding adequate appellate review. We disagree. MCR 3.210(D) governs hearings and trials in domestic relations actions and provides that the trial court must make findings of fact as provided in MCR 2.517. MCR 2.517(A) governs the findings of the trial court and provides in pertinent part:

> (1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
>
> (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.

In *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995), this Court held:

> Findings of fact regarding matters contested at a bench trial are sufficient if they are '[b]rief, definite, and pertinent,' and it appears that the trial court was aware of the

issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation. [Quoting MCR 2.517(A)(2).]

The trial court's opinion and order in the instant case briefly set forth the court's reasons for concluding that the antenuptial agreement was valid. The trial court found that it was clear from the antenuptial agreement and the subsequent conduct of the parties that they "contemplated their incomes, and property acquired from those incomes during the marriage, would remain their separate property." It is evident that the trial court rejected plaintiff's implausible – indeed, it might be properly stated, inherently incredible – testimony indicating that he did not understand the nature of the antenuptial agreement, but rather thought the antenuptial agreement, signed in a lawyer's office, was a "nuptial love story" signed "when you agree you're in love." Additionally, the trial court was aware that the key dispute between the parties was the enforceability of the antenuptial agreement. In *Booth v Booth*, 194 Mich App 284, 288-289, 486 NW2d 116 (1992), this Court held that antenuptial agreements are generally valid and enforceable, provided certain criteria were met. The trial court considered these factors in rendering its decision. Accordingly, the trial court's findings of fact complied with the requirements of MCR 2.517 and were adequate to facilitate appellate review. *Triple E Produce Corp, supra* at 176.

IV. Applicability and Enforceability of the Antenuptial Agreement

A. Language of the Antenuptial Agreement

We begin by setting forth the substantive provisions of the parties' antenuptial agreement:

> WHEREAS, an agreement to marry is about to be entered into by the parties hereto; and
>
> WHEREAS, [defendant] is the owner of certain real and personal property consisting of her residence, rental property, household furnishings, bank accounts and investments and she has informed [plaintiff] of her financial situation relative to assets, liabilities, net worth and net income;
>
> WHEREAS, [plaintiff] wishes to record of his free will that he voluntarily and irrevocably renounces all right, title and interest he might legally or otherwise, have as husband, widower or otherwise, in any property or possessions, real or personal or mixed, which [defendant] now owns, or may acquire with her funds[,] in the future or of which she may die seized;
>
> WHEREAS, both [defendant] and [plaintiff] desire to secure to [defendant] the full control and management of any and all property which she now owns and which may hereafter be accumulated, purchased or in any way acquired by her, with her own funds[,] during her lifetime, and, further, to secure to her the right to make disposition of the same according to her will and pleasure so that said property shall descend to her

said children or to … the issue of her said children in the manner which she shall designate.

NOW, THEREFORE, IT IS AGREED that [defendant], after said contemplated marriage, is to hold all of the property which she now owns in her own right, or may acquire in the future with her own funds as absolutely as if she were to remain single and unmarried, and [plaintiff] hereby conveys and relinquishes all present and future rights, title or interest in the same, which he might otherwise acquire by said contemplated marriage.

This Agreement shall become effective only on the consummation of said proposed marriage between the parties, and if such marriage does not take place, then, this Agreement shall become null and void.

B. Applicability of the Language of the Antenuptial Agreement to a Divorce

Plaintiff states in his brief that the antenuptial agreement at issue "contains no specific provision for divorce, per se, and is in fact, silent with respect to same." However, we conclude that the language of the antenuptial agreement is applicable to the division of the parties' property in connection with this divorce. Generally, "[c]ontract language should be given its ordinary and plain meaning." *Michigan Nat'l Bank v Laskowski*, 228 Mich App 710, 714; 580 NW2d 8 (1998). While it is true that the antenuptial agreement does not specifically use the word "divorce," a reasonable understanding of the plain language of the antenuptial agreement indicates that it is by its terms applicable to the division of property between the parties. Further, the antenuptial agreement required that defendant retain all her separate property following the divorce inasmuch as plaintiff agreed to "voluntarily and irrevocably renounce all right, title and interest" he might have as defendant's husband in "any [of her] property or possessions." Finally, the agreement expressly provided that it was the desire of both parties to secure to defendant "the full control and management of any and property" which she owned at the time that the agreement was signed and that she thereafter "accumulated, purchased or in any way acquired . . . with her own funds, during her lifetime."

It would be inconsistent with that statement of intent in the agreement if plaintiff would have been awarded any part of defendant's property in a divorce settlement. Indeed, the antenuptial agreement provides that defendant "is to hold all of the property which she now owns in her own right, or may acquire in the future with her own funds as absolutely as if she were to remain single and unmarried." Further, the fourth paragraph of the body of the agreement set forth above provides that the parties intended to provide defendant with *both* (1) control of her separate property during her lifetime *and* (2) the ability to provide for the disposition of her property at the time of her death.

C. Enforceability of the Antenuptial Agreement

Plaintiff also asserts that the trial court erred in upholding the validity of the antenuptial agreement. We disagree. In *Booth, supra* at 288-289, this Court set forth the three criteria to consider when examining the validity of an antenuptial agreement:

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

2. Was the agreement unconscionable when executed?

3. Have the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?

The *Booth* Court also held that the party challenging an antenuptial agreement had the burden of proving that the antenuptial agreement was not enforceable. *Id.* at 289.

The holdings in *Booth* were based on this Court's prior holding in the key case of *Rinvelt v Rinvelt,* 190 Mich App 372; 475 NW2d 478 (1991). In *Rinvelt,* this Court held that, with the above limitations, antenuptial agreements are enforceable in connection with a divorce. *Id.* at 379-382. As we will discuss further below, to our knowledge, *Rinvelt* was the first opinion of this Court or the Michigan Supreme Court to squarely address this issue. While plaintiff's argument on this point could be more clear, he essentially asserts as a ground for not applying the antenuptial agreement in the context of a divorce that Michigan law prior to *Rinvelt,* and thus at the time the antenuptial agreement at issue was entered, did not allow enforcement of an antenuptial agreement in the context of a divorce. However, acceptance of this position would be contrary to the holding of *Rinvelt* itself which held that an antenuptial agreement entered prior to the release of the *Rinvelt* opinion was enforceable. *Id.* at 373, 383. Of course, we are bound to apply the pertinent holdings of *Rinvelt,* as a published decision of this Court released after November 1, 1990, by MCR 7.215(H)(1).

Plaintiff notes Michigan Supreme Court decisions issued prior to *Rinvelt* that purportedly established that antenuptial agreements that contemplate divorce or separation were invalid as contrary to public policy. While this point is not expressly pursued by plaintiff, it appears to raise the question of whether *Rinvelt* was wrongly decided because it failed to follow these binding Michigan Supreme Court cases. However, we conclude that *Rinvelt* did not contradict binding Michigan Supreme Court precedent because the Michigan Supreme Court opinions cited by plaintiff are inapposite to whether an antenuptial agreement entered in contemplation of divorce or separation may be enforceable.

The Michigan Supreme Court in *In re Benker Estate*, 416 Mich 681; 331 NW2d 193 (1982), held an antenuptial agreement to be invalid in connection with distributing the property of the husband after his death based on a presumption of non-disclosure of the nature of the husband's property interests to the wife under the circumstances of that case. Thus, *Benker Estate* is inapposite to whether an antenuptial agreement in contemplation of divorce or separation is enforceable, especially as the Court expressly declined to consider whether a clause in the antenuptial agreement at issue in that case that provided for divorce or legal separation affected the validity of the agreement in the event of the death of one of the parties. *Id.* at 688 n 2.

In *Kennett v McKay,* 336 Mich 28, 34; 57 NW2d 316 (1953), the Court found an antenuptial agreement to apply to disposition of the husband's property after his death, concluding that there was nothing in the agreement to support the wife's claim that the agreement was made only in contemplation

of a separation or divorce. Accordingly, *Kennett* is silent on the question of the enforceability of an antenuptial agreement that contemplates divorce.

Plaintiff also cites *Chrysler Corp v Disich*, 295 Mich 261, 265; 294 NW2d 673 (1940), in support of his contention that, at the time the instant antenuptial agreement was entered, such agreements in contemplation of divorce or separation were invalid as against public policy However, *Disich* states no such thing, but rather provides that "an agreement between husband and wife that one shall bring a suit for divorce and that the other shall not contest it is illegal and void as against public policy." *Id.* That holding simply has no application to an antenuptial agreement signed *before* the parties are spouses. In sum, the cases cited by plaintiff fail to show that there was an established rule of law precluding antenuptial agreements in contemplation of divorce or separation when the agreement between the parties was entered in 1975.

It is true that the Michigan Supreme Court stated in *In re Muxlow Estate*, 367 Mich 133, 134; 116 NW2d 43 (1962), quoting 70 ALR 826, 827, that "the general rule is that an 'antenuptial contract which provides for, facilitates, or tends to induce a separation or divorce of the parties after marriage, is contrary to public policy, and is therefore void.'" However, this statement is dictum because the Court in *Muxlow Estate* held that the antenuptial agreement at issue in that case did not provide for, facilitate or tend to induce a separation or divorce, *id.* at 137, and thus it was unnecessary for the Court to address whether an agreement that did contemplate divorce or separation would be enforceable. As dictum, the statement in *Muxlow Estate* disfavoring an antenuptial agreement in contemplation of divorce did not establish any rule of law on the enforceability of such agreements. *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 52; 575 NW2d 79 (1997). Similarly, as indicated in *Rinvelt, supra* at 379, the statement in *Scherba v Scherba*, 340 Mich 228, 231; 65 NW2d 758 (1954), that it would not accord with public policy "to permit enforcement of an antenuptial agreement if its provisions actually did undertake to govern as to property settlement or alimony in the event of a divorce," was dictum. In sum, contrary to plaintiff's argument, there was no established rule of law in 1975 precluding the enforceability of an antenuptial agreement contemplating divorce.

In *Benker Estate, supra* at 693, the Supreme Court reaffirmed that the burden of proof rests on the party seeking to invalidate the antenuptial agreement because of nondisclosure by the other party. However, the Court held that there is a presumption of nondisclosure when the facts are:

> One, the antenuptial agreement provides for a complete waiver of all rights of inheritance and rights of election by the widow and does not make any provision for her upon her husband's death. Two, the husband's estate is very ample in comparison to the wife's. Three, the decedent was shown to be rather secretive about his financial affairs, lived very modestly, and gave no outward appearance of his wealth. Four, the agreement makes no reference whatsoever, in general or specific terms, to whether the parties had been fully informed of the property interests held by each other. Five, the widow was not represented by independent counsel. Six, the attorney who drafted the subject agreement testified in a deposition as to his normal procedure in such a matter and stated that he normally would discuss the assets of the parties, but that he did not press the full disclosure matter. Seven, the scrivener testified that he was not concerned

> with what the widow would get. These factors support the trial judge's decision to invoke the presumption of non-disclosure. [*Id.*]

Under these facts, plaintiff is not entitled to the presumption of non-disclosure. While the first factor is satisfied because plaintiff waived all rights of inheritance, the remaining factors do not weigh in his favor. Plaintiff asserts that defendant's estate is ample compared to plaintiff's, but plaintiff only presented documentary evidence of the value of defendant's home. Plaintiff did not present documentary evidence of the valuation of defendant's other assets, such as the value of her savings account. Additionally, plaintiff testified to the value of his assets without providing documentary evidence. Plaintiff's testimony was also suspect because the value of his assets at the time of the marriage contradicted his assertions in his prior divorce proceeding in which he attempted to eliminate his alimony obligation. Plaintiff's testimony that defendant was secretive regarding her financial affairs is contrary to the language of the antenuptial agreement. Plaintiff had the opportunity to read the agreement and consult with his divorce attorneys from his first marriage, but chose not to do so. Plaintiff's alleged failure to read the antenuptial agreement will not permit rescission because the failure was due to his own carelessness. *Dombrowski v City of Omer*, 199 Mich App 705, 710; 502 NW2d 707 (1993).

As a whole reveals that plaintiff has failed to set forth facts that afford him the presumption that defendant did not disclose her assets. Therefore, this Court must consider (1) whether the agreement was obtained through fraud, duress, mistake, misrepresentation, or nondisclosure of material facts, (2) whether the agreement was unconscionable, and (3) whether the facts and circumstances have changed to make enforcement unfair and unreasonable. *Booth, supra* at 288-289.

The trial court expressly held that plaintiff had not satisfied the above criteria. The agreement provided that disclosure of the assets was made. Plaintiff signed this agreement. The agreement is not unconscionable. Plaintiff testified that he did not expect that he would be entitled to any of defendant's assets. Lastly, the facts and circumstances since the time of the marriage warrant enforcement of the agreement. Of particular importance, the trial exhibits reveal that the parties abided by the terms of the agreement, separating their assets in their own savings accounts and paying for their respective liabilities out of a joint checking account. We also note that plaintiff failed to substantiate that he kept the home in good repair and devoted his life to the marital home, contrary to the photographs.

Plaintiff asserts that the trial court's finding that the antenuptial agreement was valid is contrary to the testimony at the evidentiary hearing. However, as previously noted, there were numerous contradictions between plaintiff's testimony regarding his assets and his representations in seeking to modify or alleviate alimony payments to his first wife. Deference is to be accorded the trial court's assessment of witness credibility. *In re Halmaghi*, 184 Mich App 263, 269; 457 NW2d 356 (1990). The trial court did not err in holding that the antenuptial agreement was executed with full disclosure, that it was not unconscionable when executed and that the circumstances had not changed to warrant invalidating the agreement.

Affirmed.

/s/ Peter D. O'Connell
/s/ William C. Whitbeck

[1] Difficult as this is to believe, the parties actually disagreed on the date of the marriage below, with plaintiff asserting in his complaint that the parties were married on or about June 6, 1975, while defendant asserted in her counter-complaint that they were married on or about July 5, 1975. In any event, given that the parties' estimates of the date of their long term marriage differ by only about one month, we consider that difference immaterial to the issues presented on appeal.

[2] The extent of the separation of the parties' respective aspects would likely strike many as extreme. Plaintiff apparently paid "rent" to defendant to live in her home. As a further example, it was even recorded on a deposit slip, dated January 6, 1982, that defendant paid plaintiff $20 cash for a New Year's dinner with her family.