

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT THOMAS CHWALIK,

Plaintiff/Counterdefendant-
Appellee,

UNPUBLISHED
December 15, 2005

ROBIN ANN CHWALIK,

Defendant/Counterplaintiff-
Appellant.

No. 250360
Wayne Circuit Court
Family Division
LC No. 02-222515-DO

Before: Wilder, P.J., and Sawyer and White, JJ.

PER CURIAM

Defendant appeals as of right from a judgment of divorce. We affirm in part, reverse in part, and remand for further proceedings.

I

The parties married in March of 1994 and had been married for nine years at the time of their divorce. When they married, defendant was thirty-seven years old and plaintiff was twenty-six years old. Defendant had an associates degree from Henry Ford Community College and was a Senior Assistant in the Human Resources Department for BASF, earning approximately \$35,000 per year. Defendant owned a 1988 Porsche and a home in Trenton, Michigan at the time of the marriage. The home was sold for approximately \$148,000 in May 1994. Plaintiff had a bachelors degree in political science and chemistry from Albion College in 1991, and received a bachelors degree and masters degree in chemical engineering from Wayne State University in 1993. Plaintiff also worked at BASF from 1985, initially earning approximately \$23,000 per year. At the time of their marriage, plaintiff was making approximately the same as defendant and had three or four thousand dollars in his 401K.

In July 1994, the parties purchased a home at 4074 Bayview Circle in Newport, Michigan, using the proceeds from defendant's May 1994 sale of her home as the down payment. In 1995 or 1996, plaintiff received a masters degree in business administration (MBA) from the University of Michigan. In the summer of 1997, the parties sold their first home at a loss of approximately \$20,000, and used the proceeds from the sale of that home as the down payment on the purchase of another home in Grosse Ile, Michigan.

After ten years of employment at BASF, defendant was notified that her job was being eliminated in March or April 1997. She was given a choice of a severance package or a different job outside of human resources. Defendant and plaintiff jointly agreed that defendant would take a severance package and pursue a new career in real estate. Defendant worked in real estate for approximately four years, after which she obtained a temporary job in human resources earning approximately \$27,700 per year. In the year 2002, defendant worked only part-time and earned \$11,000. At the time of trial, plaintiff worked as a manager in a consulting firm earning a salary of \$120,000 annually. Defendant was attending Eastern Michigan University seeking a degree in apparel/textile and merchandising, with a minor in interior design. Defendant testified that her intention was to work full-time after graduating from EMU in December 2004. From February 1999 to the time of the divorce, plaintiff was employed as a management consultant. Plaintiff earned \$120,000 annually in 2001 and 2002.

In early 2001, the parties began discussing divorce and decided that one lawyer should draft the divorce agreement or alimony package. The parties discussed dividing their marital assets and came up with a specific amount of alimony for defendant, between \$3,000 and \$3,500 per month. In June of 2001, defendant hired an attorney to represent her. Thereafter, plaintiff and defendant completed a statement concerning their respective living expenses. The parties resided together until October 5, 2001, when plaintiff moved out of the parties' house. In March of 2002, defendant's attorney sent a proposed separation agreement to plaintiff, who had since moved to Connecticut. The cover letter from defendant's attorney expressly stated that he did not represent plaintiff, and that plaintiff should seek the advice of counsel if he had any questions. Plaintiff testified that he glanced through the document, looked at the asset provision and other matters he discussed with defendant, and signed the document on March 20, 2002. Plaintiff asserts that despite the cover letter from defendant's attorney, he believed that defendant's attorney represented both the defendant and him. Plaintiff further testified that he believed the document defendant's attorney sent him was a proposal and not a legally binding contract. Plaintiff returned to Michigan and on March 26, 2002, defendant signed the document and both parties initialed it.

The separation agreement provided that plaintiff was to pay defendant spousal support of \$3,500 per month until she dies or is remarried, that plaintiff would pay tuition and book expenses for defendant until she completed college, that he would pay tuition and other expenses for his adoptive daughter and son, and that he would provide defendant "COBRA coverage"¹ for four years.

After signing the separation agreement, plaintiff later came to believe that parts of the agreement were unreasonable. Plaintiff told defendant that he would not comply with its terms and provisions. In June 2002, plaintiff hired his own attorney, and he filed for divorce on July 1, 2002 alleging a breakdown of the marriage relationship. Defendant filed an answer to plaintiff's complaint and also filed a counter-claim for divorce that in part requested enforcement of the

¹ "COBRA" refers to health insurance provided under the Consolidated Omnibus Budget Reconciliation Act of 1985. See 29 USC 1161 *et seq.*

separation agreement. Subsequently, defendant filed a motion for declaratory judgment requesting that the trial court incorporate the terms of the separation agreement into a judgment of divorce, and grant any other relief deemed just and equitable.

Following a hearing on defendant's motion for declaratory judgment, the trial court ruled that the separation agreement was not procedurally unconscionable because the record shows a meeting of the minds between the parties at the time the contract was signed. Nevertheless, the trial court ruled that the spousal support provision was unreasonable and would not be enforced. The trial court reasoned that because the parties had only been married 8 years, the amount of spousal support dictated by the postnuptial agreement was excessive. The trial court further held that the provision of the agreement requiring plaintiff to provide defendant with health insurance under the COBRA statute for four years was contrary to law and therefore unreasonable, and the trial court modified the COBRA provision of the agreement to require plaintiff to provide only three years of coverage. Following an evidentiary hearing regarding spousal support, the trial court ordered that plaintiff pay spousal support in the amount of \$2,619.07 a month for three years. A judgment of divorce reflecting the terms of the separation agreement except as modified by the trial court was entered and this appeal ensued.

II

Defendant contends the trial court erred by failing to enforce the separation agreement as written. We agree in part. It is undisputed that the separation agreement at issue in this case is a postnuptial agreement which was entered into by the parties after they had already separated.² Because a postnuptial agreement is a contract, our review of the agreement is conducted in accordance with the accepted rules of contract construction. *Ransford v Yens*, 374 Mich 110, 113; 132 NW2d 150 (1965). Thus, on appeal, the construction and interpretation of a postnuptial agreement is a question of law that this Court reviews de novo. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

A trial court's findings of fact in support of its construction and application of the contract are reviewed for clear error. *Torakis v Torakis*, 194 Mich App 201, 203; 486 NW2d 107 (1992); MCR 2.613(C). The findings are presumptively correct and the burden is on the appellant to show clear error. A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been made. See *Sparks v Sparks*, 440 Mich 141, 150 n 5; 485 NW2d 893 (1990).

Applying these rules to the agreement at issue, we conclude that the trial court did not clearly err in finding that there was a meeting of the minds between the plaintiff and defendant as to the terms of the postnuptial agreement, and that, accordingly, the agreement was not procedurally unconscionable. The record demonstrates ample opportunity for the plaintiff to

² "Postnuptial agreements made during an existing separation are thought to further judicial policy favoring settlement of controversies over litigation." *Rockwell v Rockwell*, 24 Mich App 593, 596; 180 NW2d 498 (1970), citing *In re Berner's Estate*, 217 Mich 612; [187 NW 377] (1922).

review, independently or with the assistance of legal counsel, the terms of the agreement proposed by defendant through her counsel. The record further demonstrates that plaintiff signed the documents after having had an unimpeded opportunity to evaluate the terms of the agreement as proposed.

The trial court did clearly err, however, in determining that the spousal support provision of the postnuptial agreement was unreasonable. The trial court's determination that the parties had been married for too short a time to warrant the agreed upon spousal support failed to account for all of the evidence. First, defendant permitted the equity in her first home, to which plaintiff had no claim, to be used to purchase the parties' first marital home. What had been defendant's sole property therefore became marital property subject to division in the divorce. Second, defendant arguably had a claim for a share of the value of plaintiff's MBA degree. See *Postema v Postema*, 189 Mich App 89, 93-96; 471 NW2d 912 (1991). Irrespective of whether such a claim had merit, it was not unreasonable for plaintiff to agree to pay a higher amount of spousal support to avoid litigating this question. Third, the parties' mutual agreement that defendant would leave her long time employer rather than accept a new position quite clearly had an impact on defendant's earnings, which were substantially lower than plaintiff's earnings at the time of the divorce. Because the main objective of spousal support is "to balance the incomes and needs of the parties in a way that will not impoverish either party," *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000), an agreement that defendant would receive a substantial amount of spousal support in recognition of defendant's contribution to plaintiff's career advancement, defendant's sacrifice in career choice, and defendant's dissipation of her separate assets into the marriage, was not unreasonable.³ We reverse the trial court's finding in this regard.⁴

³ Because the parties did not agree to a waiver of their rights under MCL 552.28, the award of spousal support to the defendant is modifiable upon a showing that there has been a change of circumstances. *Staple v Staple*, 241 Mich App 562, 568, 578; 616 NW2d 219 (2000).

⁴ Although not the basis for our holding that the trial court clearly erred in finding the spousal support provision unreasonable, we also note that in *Rory v Continental*, 473 Mich 457, 468-469; 703 NW2d 23 (2005), our Supreme Court stated:

A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*. Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract [¶] When a court abrogates unambiguous contractual provisions based on its own independent assessment of "reasonableness," the court undermines the parties' freedom of contract." [Citations omitted (emphasis in original).]

The Supreme Court in *Rory* concluded that "[a] mere judicial assessment of 'reasonableness' is an invalid basis upon which to refuse to enforce contractual provisions. Only recognized traditional contract defenses [such as duress, waiver, estoppel, fraud, or unconscionability] may be used to avoid the enforcement of the contract provision." *Id.* at 470.

(continued...)

Defendant also asserts that the trial court erred in modifying the COBRA provision of the separation agreement. We disagree. The trial court's finding that the COBRA provision of the agreement was unreasonable because it was contrary to law was apparently guided by the trial court's interpretation of the requirements of the COBRA statute. We review questions of statutory interpretation de novo. *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 573; 697 NW2d 529 (2005). Although there is no restriction per se on the number of years a party may agree to provide health care coverage to the party's ex-spouse, the COBRA statute itself only requires such "continuation coverage" be made available for a period of up to three years. See 29 USC 1162(2)(A). Because the parties' separation agreement referenced COBRA coverage specifically, and not health care coverage generally, the trial court's modification of the agreement to conform to the statute was not erroneous. The trial court's reasoning for modifying the provision, the provision's purported unreasonableness, was not correct. Nevertheless, the trial court reached the right result and we do not disturb it. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).

We affirm in part and reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ David H. Sawyer

/s/ Helene N. White

(...continued)

Further, "[i]n order for a contract or contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present." *Clark v DaimlerChrysler Corp*, ___ Mich App __; ___ NW2d __, decided September 13, 2005 (Docket No. 252765), slip op at 3, citing *Northwest Acceptance Corp v Almont Gravel, Inc*, 162 Mich App 294, 302; 412 NW2d 719 (1987) (emphasis added). Here, the trial court found the contract was not procedurally unconscionable, and this ruling was not clearly erroneous. Because procedural unconscionability was lacking, alternatively, as a matter of law, it appears the trial court erred by setting aside the spousal support provision solely on the basis of its finding that the provision was substantively unreasonable.