

**[J-125-1999]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

SARA J. VACCARELLO,	:	No. 0029 W.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered June 29, 1998 at
v.	:	1806PGH97 reversing the Order of the
	:	Court of Common Pleas of Allegheny
JOSEPH VACCARELLO, JR.,	:	County entered April 30, 1997 at No.
	:	FD93-08702.
Appellant	:	
	:	ARGUED: September 15, 1999

**DISSENTING OPINION**

**MR. JUSTICE NIGRO**

**DECIDED: AUGUST 28, 2000**

The Majority concludes that the contract at issue is a postnuptial agreement because it finds that when Joseph and Sara Vaccarello entered into their "Separation and Property Settlement Agreement" in April of 1981, a short time after Joseph moved out of the marital home, they intended for that agreement to be binding even in the event that they reconciled their differences and resumed living together as husband and wife. Because I do not believe that the parties intended to enter into a postnuptial agreement, I respectfully dissent.

It is well-settled law in Pennsylvania that a husband and wife are free to determine their property rights and support obligations by contract. See generally 15 Summ. Pa. Jur. 2d §§ 7.1 - 7.49 (1994); 23 Pa. C.S. § 3105. When such a contract is executed after the parties' nuptials and is intended to govern their property rights, including their future

property rights, it is generally a “postnuptial agreement.”<sup>1</sup> When, however, a husband and wife who are about to get a divorce execute a contract which they intend to be contingent on their separation, such a contract is generally a “separation agreement.”<sup>2</sup>

As the Majority correctly observes, one major difference between postnuptial and separation agreements is that separation agreements terminate by the subsequent reconciliation of the parties. Ray’s Estate, 304 Pa. at 426-29, 156 A. at 65-66; Makowski, 163 Pa. Super. at 444-45, 62 A.2d at 72. Whether a contract constitutes a postnuptial agreement or a separation agreement will depend upon the intent of the parties. Id. As with any other contract, a court must first look to the clear and unambiguous language of the contract itself in order to interpret what the parties intended. Carosone v. Carosone, 455 Pa. Super. 450, 453-54, 688 A.2d 733, 735 (1997) (citing cases).

Here, the parties’ April 1981 contract, which was drafted by an attorney, was called a “Separation and Property Settlement Agreement,” not a “Postnuptial Agreement.” We must presume that the attorney knew how to properly employ terms of art that have been used in this Commonwealth for over half a century. Also, the agreement included terms delineating the custodial rights of the parties with respect to their then-minor children and provided that Joseph would have reasonable visitation privileges. Such terms clearly would be devoid of meaning if the condition of living separate and apart was not fundamental to

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<sup>1</sup> See In re Estate of Wagner, 398 Pa. 531, 538-39, 159 A.2d 495, 499 (1960); In re Ray’s Estate, 304 Pa. 421, 426, 156 A. 64, 65 (1931); Wareham v. Wareham, 716 A.2d 674, 677 (Pa. Super. 1998); Makowski v. Makowski, 163 Pa. Super. 441, 444-45, 62 A.2d 71, 72 (1948).

<sup>2</sup> Black’s Law Dictionary defines “separation agreement” as an agreement “concerning custody, child support, alimony and property division made by a married couple who are usually about to get a divorce or legal separation.” BLACK’S LAW DICTIONARY 1365 (6<sup>TH</sup> ed. 1990). Also (continued...)

this agreement. Based on the clear terms of the writing, I believe that the April 1981 contract was a separation agreement.

Nevertheless, I am mindful of the agreement's language, which the Majority finds to be of great import, that states that as a consequence of the differences that have arisen between the parties they have been living separate and apart and have decided to settle and finally determine for all time their mutual property rights, matters of alimony, support and inheritance. I am equally mindful, however, that such language should not be read in a vacuum especially when, as here, at the time the parties executed the agreement they were living separately in anticipation of divorce. In light of these circumstances, I can reach no other conclusion but that the parties entered into this agreement dividing up their marital property and responsibilities in order to provide for the realistic finality and financial contingencies of divorce. In other words, in determining the intent of the parties, I do not believe the circumstances under which this agreement was created and executed can be ignored.

Since I find the April 1981 contract at issue to be a separation agreement, I also find it null and void as of September 1981 when the parties reconciled. I would therefore affirm the decision of the Superior Court.

Messrs. Justice Zappala and Saylor join in the dissenting opinion.

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(...continued)

see the cases cited in note 1, supra, for a general discussion of the differences between postnuptial agreements and separations agreements.