IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

GORDON K. CALHOUN, Plaintiff	: :	
v.	:	No. 01-21,115
ALLISON A. CALHOUN, Defendant	: :	

OPINION and ORDER

In this case, Allison Calhoun has requested the court to invalidate a postnuptial agreement she signed before separating from her husband, Gordon Calhoun. She claims she should not be held to the provisions of the contract for two reasons: (1) There was not full and fair disclosure of each party's assets, and (2) There was a mutual mistake in the contract. The evidence does not support either of these contentions.

One of America's long-standing freedoms is the freedom to enter into contracts. This freedom is only meaningful, however, if the courts scrupulously uphold contracts. One of the things that has made the American economy so great is that our courts do just that. Mrs. Calhoun obviously regrets signing the Agreement, just as many people have second thoughts about contracts after signing them. Nonetheless, a contract must be upheld unless the rueful party gives good reason why he or she should be allowed to renege. Mrs. Calhoun has not done that.

I. Findings of Fact

The court notes that there were many discrepancies between the testimony of Mr. and Mrs. Calhoun. On all the significant issues, we find Mr. Calhoun to be the more

credible, and the findings of fact largely reflect his testimony.

On 29 March 2001, Gordon and Allison Calhoun signed a Property Settlement Agreement which distributed the couple's assets. Each spouse kept any asset that was currently in his or her own name. Each kept the vehicle they had been driving, and assumed any debts on the vehicle. Mr. Calhoun got the marital residence and assumed the $49,900 mortgage. The parties had approximately $10,000 equity in the home. Mr. Calhoun paid Mrs. Calhoun $10,000 and put $5000 in trust for the parties' child, Avery. Mr. Calhoun assumed the credit card bill of about $3500. Each spouse paid half of the amount necessary to bring Mrs. Calhoun's school loan payments up to date, and Mrs. Calhoun assumed the balance of the school loan. Each spouse waived any right to the other's pensions.

The Agreement was the result of detailed discussion between the parties, apparently initiated by Mrs. Calhoun, as she wanted an agreement signed before separation. Although Mrs. Calhoun claimed these discussions had been minimal, including nothing more than distribution of their vehicles and personal property, the evidence showed otherwise. The court was particularly impressed with a document introduced by Mr. Calhoun, which was the original draft the couple drew up. (Plaintiff's Exhibit #1.) This document contains all the important terms of the agreement, and virtually all of these terms were written down by Mrs. Calhoun herself, which demonstrates that she was active in negotiating the contract. Particularly interesting is the note Mr. Calhoun wrote at the bottom: "It seems that this is what you want . . . ." Mr. Calhoun took this document to an attorney in order to have it drafted into a legal agreement, and brought it home for

Mrs. Calhoun to sign. She signed it on March 29, 2001, and left the marital residence soon afterwards.

DISCUSSION

The Pennsylvania Supreme Court announced a new approach for evaluating antenuptial and postnuptial agreements in Simeone v. Simeone, 525 Pa. 392, 581 A.2d 162 (1990).[1] The court held that the analysis employed by Pennsylvania courts at that time was outdated and reflected a paternalistic approach toward women that had become unsupportable. The previous approach, exhibited in cases such as Estate of Geyer, 516 Pa. 492, 533 A.2d 423 (1987), permitted courts to inquire into the reasonableness of the agreement and the knowledge of the contracting parties. Simeone at 166-67. The Supreme Court rejected the underlying presumption implicit in Geyer and similar decisions–that women are of unequal status, not knowledgeable enough to understand the nature of the contracts they enter into and readily subjected to unfair advantage by their husbands. Simeone at 165.

The court then announced a new approach, where antenuptial and postnuptial agreements are evaluated under traditional contract law. This approach is founded upon the long-recognized principle that individuals have a right to enter into such agreements and arrange their affairs as they see fit. This right flows logically from the right to privacy and the right to contract. Cercaria v. Cercaria, 405 Pa. Super. 176, 592 A.2d 64, 68

[1] We note that the same principles of law apply to postnuptial agreements and antenuptial agreements. Mormello v. Mormello, 452 Pa. Super. 590, 682 A.2d 824 (1996).

(1991). Contracting parties are normally bound by their agreement, without regard to whether the terms were read and fully understood and irrespective of whether the agreement embodied reasonable or good bargains. Mormello v. Mormello, 452 Pa. Super. 590, 682 A.2d 824, 826 (1996) (citing cases). Therefore, courts should ordinarily enforce such agreements and hold the parties to the terms of their bargain absent fraud, misrepresentation, or duress. Id. at 165. In accordance with traditional contract law, the party challenging the agreement has the burden of showing by clear and convincing evidence that it is invalid. Id. at 167.

1. Full and Fair Disclosure

The Simeone court explicitly stated it was not departing from the longstanding principle that a full and fair disclosure of the financial picture of the parties is required in order for a postnuptial agreement to be enforceable. Lack of such a disclosure may constitute a material misrepresentation that will render the agreement void. The disclosure need not be exact, nor must it be in writing. Gula v. Gula, 551 A.2d 324 (1988). A list of specific assets is not required, Cooper v. Oakes, 629 A.2d 948 (1993), and the exact value of a party's property need not be revealed. Friedman v. Friedman, 398 A.2d 615, 626 (1978). The disclosure need only be precise enough so as to not obscure the general financial resources of the parties. Mormello v. Mormello, 452 Pa. Super. 590, 682 A.2d 824 (1996); In re Estate of Hartman, 582 A.2d 648 (1990). When, as here, the agreement includes a statement that full disclosure has been made, a presumption of full disclosure arises. This presumption can be rebutted by clear and convincing evidence of

fraud or misrepresentation. Simeone at 167.

Mrs. Calhoun claims the Agreement should be declared void because there was no full and fair disclosure of Mr. Calhoun's assets. She maintains she had no idea of the value of the assets in Mr. Calhoun's name, specifically his Merrill Lynch Account, savings bonds, and pensions. She also claims she had no inkling how much Mr. Calhoun earned. These claims are simply not believable.

Mr. Calhoun testified that the spouses shared all their financial statements, which were then stored in a file cabinet in their home, except for the savings bonds in Avery's name, which were received at the couple's residence but stored in a safe at his parents' residence. Both spouses viewed each other's quarterly statements and pay stubs. At some times, Mrs. Calhoun had been in charge of the couple's finances. At other times, Mr. Calhoun had been in charge. Although neither spouse knew the exact values of all their assets–and few couples do–both had a pretty accurate general picture what these assets were worth. We find Mr. Calhoun's testimony credible on this issue, and find that Mrs. Calhoun knew the approximate value of the couple's finances.

It is especially enlightening that during the bargaining process Mrs. Calhoun had originally asked for a cash payment of $15,000, which was roughly half of the parties' assets. However, she settled for $10,000, with the additional $5000 being put in trust for Avery. This shows she was indeed aware of the approximate value of the couple's assets. In short, based on the testimony and this court's assessment of credibility, Mrs. Calhoun has failed to rebut the presumption of full and fair disclosure.

Mrs. Calhoun's main point of contention is Mr. Calhoun's state retirement

pension. On March 29, 2001, the date the Agreement was signed, this pension had not yet vested, and was worth about $15,000. Less than four months later, in July of 2001, legislation was enacted changing the vesting period from ten years to five years. Although the testimony did not reveal how long Mr. Calhoun had worked for the state, it is clear that after the legislation was enacted, Mr. Calhoun's pension was vested and worth $72,000. Mrs. Calhoun claims that if she had known the pension would soon be worth that much money, she would not have signed the agreement. That may be true, but hindsight is no basis upon which to void the agreement.

Clearly, the pension issue is not a matter of full and fair disclosure. Mrs. Calhoun knew the present value of the pension at the time of the agreement, which was $15,000. She also knew, according to Mr. Calhoun's credible testimony, that his pension was not yet vested, but that at some time in the future, if he cont inued his employment, the pension would vest and would be worth much more. Mrs. Calhoun must certainly have been aware of how pensions work, for she had one of her own.

In any case, Mrs. Calhoun waived her right to an interest in Mr. Calhoun's pension. When a postnuptial agreement states that a party is waiving legal rights, such as an interest in the other's pension, the waiver is presumed valid and will be given effect unless the challenging party can show, by clear and convincing evidence, inadequate disclosure of financial worth, fraud, misrepresentation, or duress. Cooper v. Oakes, 427 Pa. Super. 430, 629 A.2d 944, 948 (1993); Cercaria v. Cercaria, 405 Pa. Super. 176, 592 A.2d 64, 71 (1991). The agreement need not list the rights being relinquished in order for this presumption to apply, Cooper at 948, but if it does specifically mention a

party's statutory rights, that party is held to be aware of those rights. Adams v. Adams, 414 Pa. Super. 634, 607 A.2d 1116, 1119. Here, the agreement explicitly mentions that Mrs. Calhoun waives her interest in Mr. Calhoun's pension with the State Employees Retirement System, as well as his retirement account through the Military Reserves. Agreement, p. 6. Similarly, the Agreement states that Mr. Calhoun waives any right to Mrs. Calhoun's retirement account "through Holiday Hair as well as any retirement account she may have through Alley Kat Hair or Susquehanna Health Systems." Agreement, p. 6.

What Mrs. Calhoun did not know was that the pension would vest *sooner than anticipated*. That is something Mr. Calhoun could not have known without a crystal ball or ESP. Therefore, he could not have disclosed it. Nor is there any evidence Mr. Calhoun even knew the proposed legislation existed. The enactment was an unforeseen event, which occurred after the agreement was signed, and that does not constitute inadequate disclosure.

2. Mutual Mistake of Fact

Mrs. Calhoun also claims the agreement should be rescinded due to a mutual mistake of fact, but has quoted no case law whatsoever on the issue–perhaps because that doctrine does not apply to the circumstances of this case.

Reformation of a contract is an equitable remedy which should be sparingly granted, because "it is not the province of the Court to alter a contract by construction nor to make a new contract for the parties." Amoco Oil Co. v. Snyder, 478 A.2d 795

(1984). Therefore, a court may void or reform a contract based on this doctrine only when "a mutual mistaken belief, shared by the parties with respect to a material aspect of the agreement, prevents it from conforming to the true intention of the parties." Philadelphia Electric Company v. Borough of Lansdale, 424 A.2d 514, 518 (1981). To obtain such relief, the moving party must prove the existence of a mutual mistake by evidence that is clear, precise, and convincing. Morningstar v. Department of Transportation, 646 A.2d 666, 668 (1994). Mrs. Calhoun has failed to carry this burden.

In the case before this court, the intention of the parties clearly was that both spouses would relinquish any right each had to the other's pension, and that intention was not thwarted by an earlier vesting of Mr. Calhoun's pension. Therefore, mutual mistake of fact is inapplicable.

Moreover, in order for the mutual mistake doctrine to apply, the parties must be mistaken as to "existing facts at the time of execution." Holmes v. Lankenau Hospital, 627 A.2d 763,767 (1993). Contract law imposes this requirement for a very good reason: allowing parties to void contracts based upon unforeseeable events would turn our economy topsy-turvy. A person signing a contract is making a commitment. That entails a certain degree of risk, and each party must take that into account before signing the contract. At the time the Agreement was signed, Mr. Calhoun's pension was worth $15,000. Neither party was mistaken on that point. What the parties did not know, and could not have known, was that the pension would vest earlier than anticipated. That fact did not exist at the time the Agreement was signed, and so cannot be a basis upon which to invalidate the Agreement.

We also note that for similar reasons, underestimating damages or making a settlement before damages are accurately ascertained is not considered a mutual mistake of fact upon which to provide relief. Holmes, supra, at 768; Klein v. Cissone, 443 A.2d 799, 804 (1982). In a sense, Mrs. Calhoun underestimated her damages. That is unfortunate for her, but the Agreement correctly reflects the intentions of Mr. and Mrs. Calhoun at the time they signed the Agreement, and this court must uphold the bargain they freely entered into.

If Mr. Calhoun had owned a stock valued at $15,000 at the time of the agreement, which suddenly jumped to $72,000 four months after separation, we doubt Mrs. Calhoun would think she had a prayer in asking for the Agreement to be voided. After all, the essence of stocks is that their value is always fluctuating, sometimes increasing and sometimes decreasing. Clearly, there is far *less* justification for voiding the Agreement based upon the vesting of a pension, since by its very nature a pension is constantly *increasing,* and an unvested pension is *expected* to jump significantly once it is vested. The testimony did not disclose when Mr. Calhoun's pension was due to vest, but it must have been some time within the next five years. Therefore, Mrs. Calhoun must have known that Mr. Calhoun's pension would vastly increase in value in the relatively near future, so long as he continued his employment. The fact that she did not realize it would vest in four months is not a sufficient reason to invalidate the agreement.

Mrs Calhoun has not advanced any additional doctrine under contract law which would allow us to rescind the contract under these conditions. There are several doctrines which can be applied to relieve one party from performing because of unforeseen events

which would create great hardship (impossibility, impracticability, and commercial frustration). However, even in those cases the doctrines are applied very sparingly. Generally, the contracting parties bear the risk of an increased cost of performance. Thus if Mr. Calhoun had owned 50 shares of stock valued at $100 each at separation and the parties agreed for Mr. Calhoun to pay Mrs. Calhoun $2500, representing half the value of the stock, Mr. Calhoun would be held to that payment, even if the stocks were later worth only $50 apiece.

If Mr. Calhoun would not be permitted to renege based upon the decreased value of an asset, why should Mrs. Calhoun be permitted to renege based upon the increased value of an asset? The bottom line in contract law is that at the time of contracting, each party accepts the risk of his or her bargain.

In short, Mrs. Calhoun is a bright, independent-minded woman. She did not appear to be held in patriarchic tutelage by her husband or kept in the dark about the couple's financial matters. Mrs. Calhoun knew what she was doing when she signed the Agreement, and like any competent adult, she will have to accept the consequences of the choices she made.

O R D E R

AND NOW, this _____ day of September, 2001, for the reasons stated in the foregoing opinion, the Petition to Vacate the Agreement, filed by Mrs. Calhoun, is denied.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Christina Dinges, Esq.
Janice Yaw, Esq.
Gary Weber, Esq., Lycoming Reporter