101605

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

Charles W. Lee,
Petitioner,

v.

Civil Action No. 09-D-137
Judge Thomas Keadle

Patricia E. Lee,
Respondent.

ORDER DENYING PETITION FOR APPEAL

On the 30th day of July, 2010, Patricia Lee, by counsel, filed a Petition for Appeal in this Court. Pursuant to W. Va. Code §51-2A-14, this Court shall review findings of fact made by the Family Court under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard. The Court has reviewed the Petition for Appeal, the parties' arguments, and the record in the case and has concluded that the Petition for Appeal should be denied.

The Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

This case concerns whether the Petitioner must provide housing for the Respondent under the parties' prenuptial agreement. The relevant part of the agreement requires Charles Lee to provide housing for Patricia Lee until her daughter turns 18 or until she enters into "another relationship."

The parties met in March 2005. Respondent began work as manager of Petitioner's apartments. The parties became formally engaged in February 2006.

The initial draft of the prenuptial agreement that Petitioner presented to Respondent was based on a form that Petitioner printed from the Internet. Neither party consulted counsel in the drafting or negotiation of the prenuptial agreement. The parties

did not fully disclose their assets and debt. Mr. Lee, an IRS employee, made approximately ten thousand dollars per month, but most of his income was consumed in servicing his debts. Ms. Lee had no employment income at the time of the agreement, but she states that she helped Mr. Lee manage his properties.

The Family Court found that the agreement was entered into after a minimum of seventeen hours of negotiation between the parties and that it underwent three separate drafts. The Family Court further found that Respondent wrote notations on two of the drafts regarding changes and additions to be made, and that Petitioner made the changes she requested. Petitioner primarily drafted and typed the agreement. It appears from the record that Petitioner, at Respondent's request, inserted Paragraph 10 into the prenuptial agreement.

The prenuptial agreement was executed on July 17, 2007. The parties married on July 28, 2007, in Upshur County.

On June 4, 2009, Petitioner told Respondent that he had an adulterous affair. The Family Court found that the parties separated on July 12, 2009.

Chris Cutright, the father of Respondent's grandchild, testified that Rodney Stalnaker was in the marital home, located at Route 9, Box 368, Buckhannon, on August 14, 2009. Cutright further testified that, around this time, the Respondent picked up Cutright and Respondent's adult daughter at a bar and took them to the marital home, where he alleges that Respondent had sexual relations with someone called J. Shelly. Cutright testified that he heard the act occur. Respondent denies that she had sexual relations with J. Shelly. Respondent visited Rodney Stalnaker in a correctional facility

after the parties' separation. She testified that Rodney Stalnaker was a former boyfriend but denied that they had a sexual relationship.

After the parties' separation, Respondent met Jim Walker through the Internet and spent some time with him in Kentucky. Respondent admitted to this affair. In May 2010, Jim Walker visited the marital home for several days. Ms. Lee testified that the sexual component of the relationship had ended by that time.

The Family Court found that Respondent had permitted Joseph Correia, the father of her minor daughter, to reside in the marital home. Correia had frequently stayed in the marital home before the parties separated, and the Family Court found that no one seemed to have a problem with him spending a considerable amount of time there.

The Family Court, in its final Decree of Divorce, found that Respondent did enter into "another relationship" as contemplated in the agreement. Specifically, the Family Court found that she had entered into such relationships with Rodney Stalnaker, Jim Walker, and J. Shelly. Consequently, the Family Court found that Petitioner was no longer required to provide housing for Respondent under the terms of the prenuptial agreement.

The Family Court made an alternative finding that, if the prenuptial agreement were held unenforceable, Respondent would not be entitled to alimony. Furthermore, the Family Court found that Petitioner would be entitled to an equitable distribution equalizing payment of $1,198.44. Petitioner waived his right to the equalizing payment to the extent that he possessed such a right.

Paragraph 10 of the prenuptial agreement reads as follows:

> 10) In the event that there is a separation of the parties, the following will occur regarding spousal support:

- In the event of separation, Charles will provide Patti housing at no cost at Route #9, Box 368, Buckhannon until she decides to move or until she enters into another relationship. The provision of housing will include basic and "nationwide" phone service for the same period of time. As well as other household expenses, with a limit of $500.00 per month, until such time as her minor children graduate from high school.
- Patti will be provided one of the family vehicles in the event of separation or divorce. She will be responsible for maintaining it and its continued operation.

On its face, the agreement appears to be unfair to Respondent. However, both parties sought to have the prenuptial agreement enforced by the Family Court.

Petitioner argues that Respondent is not entitled to the housing benefit provided in Paragraph 10 because she has entered into "another relationship." Respondent denies that she has entered into "another relationship." "Another relationship" is not defined in the agreement.

Mr. Lee testified that he intended "another relationship" to mean "a romantic involvement or just the traditional sense of being with another partner." Respondent testified that she asked Petitioner, "So you will be permitted to break this agreement without penalty, but I will have to remain celibate until Sherika becomes 18?" She further testified that Charles Lee's reply to this question was, "Of course not. I just don't want some guy living in my house." Charles Lee testified that he did not remember that conversation but was not sure it did not occur.

De Facto Marriage

Ms. Lee argues that the Court should look to the concept of de facto marriage to determine whether her right to housing under Paragraph 10 has terminated. However, the concept of de facto marriage is not applicable to this case. § 48-5-707(a)(1) states: "In

the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of the divorce and the award of spousal support, a de facto marriage has existed between the spousal support payee and another person."

W. Va. Code § 48-1-203 states:

> "Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, by which the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions that define the respective property rights of the parties during the marriage, or upon the death of either or both of the parties. A prenuptial agreement is void if at the time it is made either of the parties is a minor.

Just as the parties are able to establish the amount and form of spousal support by contract, they may also establish the conditions under which such support terminates, which the parties in this case have done. There is no reason to suppose that the parties intended "another relationship" to be synonymous with the legislative term "de facto marriage." Thus, the pertinent question is not whether Patricia Lee has entered into a de facto marriage but, in accordance with the parties' prenuptial agreement, whether she has entered into "another relationship."

The Meaning of "Another Relationship"

The parties disagree regarding the proper construction of the phrase "another relationship." Ms. Lee argues that "another relationship" means a relationship similar to the one in which she was involved when she signed the prenuptial agreement, namely a long-term, live-in relationship, engagement, and marriage with free housing. Mr. Lee

testified that "another relationship" means "a romantic involvement or just a traditional sense of being with another partner." No one suggests that Respondent has entered into a relationship of the kind she had with Petitioner. However, Petitioner contends that, under the construction of "another relationship" he propounds, Respondent has entered into "another relationship."

The Family Court found that Respondent had entered into three other relationships. The Family Court read "another relationship" broadly, finding that even very short-term sexual affairs were other "relationships" under the terms of Paragraph 10.

"The mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court." Syl. pt. 1, Berkeley Co. Pub. Svc. Dist. v. Vitro Corp. of America, 152 W. Va. 252, 162 S.E. 2d 189 (1968). "Contract language usually is considered ambiguous where an agreement's terms are inconsistent on their face or where the phraseology can support reasonable differences of opinion as to the meaning of words employed and obligations undertaken." Fraternal Order of Police, Lodge No. 69 v. City of Fairmont, 196 W. Va. 97, 101, 468 S.E. 2d 712, 716 (1996). "A contract is ambiguous when it is reasonably susceptible to more than one meaning in light of the surrounding circumstances and after applying the established rules of construction." Id.

Merriam Webster's Collegiate Dictionary, 10th ed. 1994, defines "another" as follows: 1) different or distinct from the one first considered; 2) some other; 3) being one more in addition to one or more of the same kind. It defines "relationship" in the following ways: 1) the state of being related or interrelated; 2) the relation connecting or binding participants in a relationship: as a) kinship, b) a specific instance or type of

kinship; 3) a) a state of affairs between those having relations or dealings; b) a romantic or passionate attachment. The phrase "another relationship" is patently ambiguous because the phraseology can support reasonable differences of opinion as to the meaning of words employed and obligations undertaken.

Respondent argues that Petitioner was the drafter of the prenuptial agreement and that, because Petitioner was the drafter, the agreement should be construed against him. Petitioner argues that the Family Court did not abuse its discretion by resolving any ambiguity in the agreement in favor of Petitioner, who was the principal drafter, when Respondent's proposed interpretation is nonsensical.

"In case of doubt, the construction of a written instrument is to be taken most strongly against the party preparing it." Henson v. Lamb, 120 W. Va. 552, 199 S. E. 459 (1938). However, the aforementioned rule generally applies only after the finder of fact has tried and failed to ascertain the parties' intent in an ambiguous agreement. *See* Klapp v. United Ins. Group Agency, 663 N. W. 2d 447 (Mich. 2003); Unit Vending Corp. v. Lacas, 1990 A. 2d 298 (Pa. 1963); Burns Mfg. Co. v. Boehm, 356 A. 2d 763 (Pa. 1976); E.I. du Pont de Nemours and Co. v. Shell Oil Co., 498 A. 2d 1108 (Del. 1985). Therefore, even if the rule were otherwise applicable, a court could not properly construe the contract against the drafter until other means of interpretation had failed. The Family Court did not abuse its discretion by declining to construe the ambiguity against Petitioner.

Respondent argues that the Family Court abused its discretion by interpreting the term "another relationship" in a manner contrary to its plain grammatical meaning. Specifically, she argues that "another" grammatically ensures that there is a previous or

existing relationship to which "another relationship" must be compared, and that relationship was a live-in relationship of several years culminating in an engagement and marriage. However, "another relationship," as previously noted, is ambiguous. If one looks solely to the language, "another relationship" could be, in a narrow sense, one more romantic or passionate attachment of the same kind, or it could refer to some other "relationship" in a broader sense of the word.

> Extrinsic evidence may be used to aid in the construction of a contract if the matter in controversy is not clearly expressed in the contract, and in such case the intention of the parties is always important and the court may consider parol evidence in connection therewith as to conditions and objects relative to the matters involved.

Berkeley Co. Pub. Svc. Dist. v. Vitro Corp. of America, 152 W. Va. 252, 267, 162 S.E. 2d 189, 200 (1968).

In this case, where the terms of the prenuptial agreement are ambiguous and the trial court's resolution is based on extrinsic evidence regarding intent, the trial court's findings are entitled to deference. "[I]t is for a trial court to determine whether the terms of an integrated agreement are unambiguous and, if so, to construe the contract according to its plain meaning." Fraternal Order of Police, Lodge Number 69 v. City of Fairmont, 196 W. Va. 97, 100, 468 S.E. 2d 712, 715 (1996). "However, when a trial court's answers rest not upon plain meaning but on differential findings by a trier of fact, derived from extrinsic evidence as to the parties' intent with regard to an uncertain contractual provision, appellate review proceeds under the 'clearly erroneous' standard." Id. In this case, the Family Court's decision rests heavily on extrinsic evidence as to intent. The Family Court apparently found Petitioner's representations as to the parties' intent more credible than those of the Respondent. The Family Court was in the best position to

weigh evidence and evaluate credibility of witnesses. The Family Court's findings regarding the parties' intent were not clearly erroneous. The Family Court's finding that the Respondent entered into "another relationship" does not constitute abuse of discretion.

Respondent argues that the Family Court's finding that she had sexual relations with J. Shelly and Rodney Stalnaker after the parties' separation is clearly erroneous and unsupported by the facts. Those findings are supported by the testimony of Chris Cutright. Although Respondent denied Cutright's assertions and suggested that his character was questionable, the Family Court, as fact-finder, is in the best position to evaluate credibility of witnesses. The Family Court's findings that Respondent had sexual relations with J. Shelly and Rodney Stalnaker are not clearly erroneous.

Equitable Estoppel

Respondent argues that equitable estoppel should apply because she changed her position to her own detriment by marrying Petitioner, waiving certain claims that Petitioner wanted her to waive, including claims to over one million dollars in marital income, and by trusting that if the marriage failed, she would at least have the security of free housing for herself and her daughter. Petitioner argues that if the doctrine of equitable estoppel does apply in this case, it would possibly apply to the extent that it would permit Respondent to have the entire prenuptial agreement set aside.

"A party who by his acts, declarations, or admissions, or by failure to act or speak under circumstances when he should do so, either designedly or with willful disregard of the interest of others, induces or misleads another to conduct or dealings which he would

not have entered upon but for the misleading influence, will not be allowed afterwards to come in and assert his right to the detriment of the person so misled." Syl. pt. 3, Ballard v. Kitchen, 128 W. Va. 276 (1945). Respondent argues that estoppel applies because she relied on what Charles Lee told her, signed the agreement, and changed her position to her own detriment by relying on Charles Lee's promises and getting married. It seems that Respondent's estoppel argument is founded on a conversation that allegedly occurred during negotiation of the prenuptial agreement. Specifically, Patricia Lee testified that, when she inquired, "So you will be permitted to break this agreement without penalty, but I will have to remain celibate until Sherika becomes 18," Charles Lee replied, "Of course not. I just don't want some guy living in my house." The Family Court found, over objection by Respondent's counsel, that Petitioner denied that this conversation took place as Ms. Lee alleges. On direct examination, when Mr. Lee was asked whether he had made that statement, he replied, "I don't recall if that is the only statement I made or if I made it just that way or what." Mr. Lee further testified, "I believe there was quite a bit of discussion about when she was entering another relationship, whether or not that person would have a house for her to move to or whatever. I don't know the whole gist of the narrative." On re-cross, Mr. Lee testified that he didn't remember making the alleged statement, but he was not certain that he did not do so. In any event, if the Respondent were to present adequate proof that the alleged conversation took place, the elements of estoppel might be satisfied with ease. However, the Respondent failed to meet the applicable burden of proof.

"The burden of proof is upon the party asserting estoppel and it must be made to appear affirmatively by clear, precise and unequivocal evidence." Brown v. Crozer Coal

& Land Co., 144 W. Va. 296 (1959). Here, the evidence supporting Ms. Lee's claim consists solely of her own testimony. Mr. Lee's testimony may not have directly contradicted Ms. Lee's testimony, but it is far from supportive. Ms. Lee has not carried the burden of proving by clear, precise, and unequivocal evidence that Mr. Lee is estopped from asserting his interpretation of the prenuptial agreement.

Equal Protection and Due Process

Respondent argues that the Family Court's decision violates her Fourteenth Amendment Equal Protection and Fifth Amendment Due Process rights and denies her the benefit of the prenuptial agreement. The Petitioner disagrees. In fact, Ms. Lee does receive some benefit from the agreement: she is not required to pay an equitable distribution equalizing payment, and she is entitled to one of the family vehicles. The result in this case was a product of the parties' bargain. The Respondent has not shown that the Family Court's decision violates her Fourteenth Amendment Equal Protection or Fifth Amendment Due Process rights.

The Court does hereby ADJUDGE and ORDER as follows:

1. The Petition for Appeal from the Family Court's Decree of Divorce is DENIED.
2. The final Family Court Decree of Divorce is AFFIRMED.
3. The Circuit Clerk is ORDERED to mail a copy of this Order to:
   a. Family Court Judge Robert Reed Sowa, Seventeenth Family Court Circuit, 307 Main Street, Suite 405, Sutton, WV 26601;

CC Mailed 10/15/10
FCJ Sowa
J Hunter
P Conley

b. J. Burton Hunter, One West Main Street, Buckhannon, WV 26201, *Counsel for Respondent*;

c. Peter J. Conley, Siegrist & White, P.L.L.C., 219 South Second Street, P.O. Drawer 2550, Clarksburg, WV 26302, *Counsel for Petitioner*.

Entered this 15th day of October.

Thomas H. Keadle, Judge
26th Judicial Circuit

UPSHUR COUNTY, W. VA.
2010 OCT 15 PM 2:36
CIRCUIT CLERK

ATTEST: A true copy from the records located in the office of the Clerk of the Circuit Court of Upshur County, West Virginia.
Given under my hand 12/14/10
BRIAN D. GAUDET, CLERK
By Melissa D Cumm
Deputy Clerk

ENTERED 10/15/10
ODM BOOK 64
PAGE 596-607