

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

CORNELIA H. BOONE,)
)
Plaintiff/Appellant,) **Shelby Chancery No. D21577-2 R.D.**
)
VS.) **Appeal No. 02A01-9507-CH-00144**
)
CHARLES P. BOONE,)
)
Defendant/Appellee.)

APPEAL FROM THE CHANCERY COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE FLOYD PEETE, JR., CHANCELLOR

FILED

March 27, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

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AFFIRMED IN PART AND MODIFIED IN PART

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

HEWITT P. TOMLIN, JR., SR. J.

In this divorce action, Cornelia Boone (the "Plaintiff") was awarded a divorce from

Charles Boone (the “Defendant”) on the grounds of inappropriate marital conduct. The trial court awarded the parties’ residence at Chambers Chapel to the Plaintiff and ordered the Defendant to pay the existing mortgage on the property. The defendant was also ordered to pay \$4500.00 per month in alimony for two years and \$3000.00 per month in alimony for the following ten years. The trial court upheld a prenuptial agreement which was entered into by the parties two days prior to their marriage. Pursuant to the terms of the prenuptial agreement, the trial court ordered the Defendant to pay \$10,000.00 in cash to the Plaintiff and all reasonable liabilities and obligations of the Plaintiff which were incurred with the Defendant’s knowledge and consent. The Defendant was ordered to convey to the Plaintiff all of his real and personal property owned jointly with the Plaintiff. The trial court further ruled that neither party has any claim to the appreciation in the other’s separate property. For the reasons stated hereafter, we modify the trial court’s award of alimony to provide for an award of permanent alimony, but we affirm the trial court’s judgment in all other respects, including the enforcement of the parties’ prenuptial agreement.

FACTS

The parties entered into a prenuptial agreement on August 10, 1967 and were married two days later on August 12, 1967. The Plaintiff was thirty years old at the time of the signing of the prenuptial agreement.

Prior to the execution of the agreement, the Plaintiff’s education included two years of study at Sweetbriar College, two months of study in France at the Alliance Francaise and the Ecole Phonetique and completion of an economics and marketing course at Memphis State University. The Plaintiff knew that the Defendant was a member of the University Club, the Hunt and Polo Club and the Memphis Country Club at the time of the execution of the prenuptial agreement. She was aware that the Defendant had been previously married to the daughter of the owner of Malone and Hyde Company and that the Defendant owned approximately seven to eight thousand shares of Malone and Hyde

common stock. The Plaintiff also knew that the Defendant was beginning a new job selling commercial real estate at E.H. Crump and that the Defendant owned several pieces of speculative real estate. The Plaintiff was further aware of the existence of the Defendant's trust fund which had an approximate value of \$267,000.00.

One month prior to the execution of the prenuptial agreement the Defendant's attorney met with the parties and discussed the terms, conditions and purposes of the prenuptial agreement. During this meeting, there was a discussion concerning the Defendant's assets and properties as well as his liabilities and obligations, including the Defendant's obligations from his previous marriage. Although the Defendant's attorney advised the Plaintiff to seek separate counsel to review and discuss the prenuptial agreement, the Plaintiff chose not to seek separate counsel.

On August 10, 1967, the Plaintiff and Defendant met at the Cotton Bowl Restaurant in Memphis, Tennessee whereupon the Plaintiff read and reviewed the prenuptial agreement. After reading the agreement, the Plaintiff insisted upon adding additional language to the agreement which obligated the Defendant to support her horse, Bay Mare Sandy, for as long as the horse lives. The Plaintiff never indicated to the Defendant that she did not understand or comprehend any terms or conditions of the prenuptial agreement. The Plaintiff never asked for additional time to review the document or for additional time in order to retain independent counsel to review the agreement with her.

Within the provisions of the prenuptial agreement, the Plaintiff acknowledged that the Defendant divulged to her and fully acquainted her with a knowledge of his assets, properties, liabilities and obligations. The Plaintiff also acknowledged that she was aware of the financial condition and estate of the Defendant at the time of the signing of the agreement and was aware of the obligations and liabilities of the Defendant.

After the parties' marriage, the Plaintiff became a registered dietician with a bachelor's degree in dietetics and a master's degree in nutrition. The Defendant has an

undergraduate degree from Vanderbilt and a law degree from Vanderbilt. The Defendant has taken accounting courses at the University of Tennessee and has completed two Harvard business school programs.

Throughout the parties twenty-seven year marriage, 1987 was the only year wherein the Plaintiff worked full-time outside the home. Although the Plaintiff worked at several part-time jobs, she spent the majority of her time working inside the home. For five years, the Plaintiff kept the accounting books for the household as well as for the Defendant's business, C. Boone and Company. She served as an officer and director of Freeway Investments and 64-40, two companies owned by the Defendant. The Plaintiff helped entertain the Defendant's business friends and social guests. In 1985, the Plaintiff helped redecorate the Quality Inn Hotel in which the Defendant owned an interest. She also assisted the Defendant in managing the St. Louis Truck Stop, a restaurant owned by the Defendant.

The Plaintiff was the primary caretaker of the parties' only child, a son, born on November 5, 1970. In 1975, after discovering that their son was dyslexic, the parties enrolled the child in a summer school program. Thereupon, the Plaintiff began participating in this summer school program tutoring other children with dyslexia so that the child could be taught at a reduced fee. The Plaintiff and the child participated in this summer school program from 1975 through 1980. From 1977 through 1984, she took the child to swim practices and swim meets.

Based on the foregoing evidence, the trial court made the following findings of fact:

9. Both Plaintiff and Defendant are sophisticated, intelligent and well-educated individuals, both capable of reading and understanding the document in question.

10. Plaintiff was aware prior to the execution of the prenuptial agreement in question that Defendant was a member of the University Club, the Hunt & Polo Club and the Memphis Country Club, all private country clubs located in Memphis, Tennessee; that membership in such organizations was expensive and required significant income; that Defendant had previously been married to the daughter of the owner of Malone & Hyde Company and was presently starting a new job at E.H. Crump & Company selling commercial real estate; that the Defendant owned several pieces of

speculative real estate located in various places, including Birdsong Road, in Como and at the corner of Interstate 40 and Highway 64; that Defendant owed significant amounts of money on mortgages on that property in the approximate amount of \$20,000.00 per year; that Defendant had two children from his previous marriage and would soon be obligated to pay child support for both of those children who, at the time of the execution of the prenuptial agreement, were approximately three years and one year of age; that the Defendant previously had purchased one piece of property for approximately \$5,000.00 to \$15,000.00 and had sold it to a gasoline service station for \$60,000.00; and that the Defendant was wealthy enough to be able to go around the world during the time that Plaintiff and Defendant were "courting".

11. Plaintiff further knew that "speculative real estate" meant that the risks of holding such property were high and that the possibilities of profit were great.

12. Plaintiff also knew that at least one piece of speculative real estate owned by Defendant was not contemplated to reach its highest profit potential for approximately twenty years.

13. Plaintiff also knew that Defendant owned approximately seven to eight thousand shares of Malone & Hyde common stock and that he had available to him a trust fund in the approximate amount of \$267,000.00.

14. Defendant advised Plaintiff generally of his assets, property, liabilities and obligations.

15. The testimony of the parties reveals that Plaintiff either knew or could have known of the location of each piece of speculative property owned by the Defendant prior to the execution of the prenuptial agreement in question.

16. Plaintiff's grandfather had owned a cotton mill in Rome, Georgia which Plaintiff's grandmother had sold and divided the proceeds between Plaintiff's mother and Plaintiff's aunt. Plaintiff's mother was living off of the investments from her portion of that sale at the time of Plaintiff's courtship with and marriage to Defendant.

17. Both Plaintiff's mother and Plaintiff's grandmother were members of the Memphis Country Club.

18. Plaintiff wanted to protect any potential inheritance of hers from any risks created by Defendant's ownership in speculative real estate and the mortgages and other obligations which accompanied such ownership.

19. Approximately one month prior to the execution of the document in question, Plaintiff and Defendant met at the offices of the Honorable Harry W. Wellford who, at the time, represented the Defendant.

20. The purpose of the meeting was to discuss the terms, conditions and purpose of the prenuptial agreement which was eventually signed by the two parties.

21. At the meeting in question, Wellford advised Plaintiff to retain counsel of her own choosing to review and discuss the prenuptial agreement contemplated between the parties. Plaintiff however was satisfied to move forward with the discussion concerning the creation of the prenuptial agreement without retaining separate counsel.

22. At this meeting at Wellford's office there was discussion about the

properties and assets that the Defendant Charles Boone owned or in which he had an interest.

23. There was also discussion concerning the obligations which Charles Boone had, "including his obligations arising from his prior marriage and the fact that several properties or investments were subject to outstanding liabilities or obligations."

24. On August 10, 1967, Plaintiff and Defendant met in the Cotton Bowl Restaurant in Memphis, Tennessee. Defendant had two copies of the prenuptial agreement in question.

25. Plaintiff reviewed the document with sufficient care such that she insisted upon an addition to the agreement of the phrase "Boone agrees to support Hayley's horse, Bay Mare Sandy, for as long as said beast lives". [sic] Plaintiff "felt very strongly" about her horse and insisted that the prenuptial agreement contain this additional obligation to be undertaken by Defendant.

26. Plaintiff never indicated to Defendant that she did not understand any of the terms or conditions of the prenuptial agreement; nor did Plaintiff ask for additional time to review the agreement or additional time for purposes of retaining independent counsel to discuss it with her. The agreement was signed in duplicate by the parties and was signed again and initialled at the place at which provisions were made for Plaintiff's horse.

27. In the prenuptial agreement Plaintiff acknowledges that Defendant has divulged to her and fully acquainted her with a knowledge of Defendant's assets, properties, liabilities and obligations and Plaintiff further acknowledges that she is aware of the financial condition and estate of Defendant at the time of the execution of the agreement, as well as of his obligations and liabilities.

28. The agreement in question contemplates possible losses in development potential of Defendant's that [sic] real estate.

29. Under the terms and conditions of the agreement, Defendant agrees in the event of divorce to convey to Plaintiff all of Defendant's right, title and interest in and to any property owned jointly or as tenants in common or as tenants by the entirety. Defendant further agrees to pay to Plaintiff in the event of divorce the sum of \$10,000.00 and to "pay all reasonable bills, accounts, obligations, and liabilities of (Plaintiff) at such time incurred with his prior knowledge and consent."

30. The prenuptial agreement provided that, if Defendant carried out his obligations under the terms and conditions of the agreement as set out above, the Plaintiff gives up her claims on Defendant's property and estate.

31. Defendant Charles Boone has undertaken and has carried out all of his obligations as set out in the prenuptial agreement. Further, in 1985, at Plaintiff's insistence, Boone created a trust fund of \$100,000.00 which was designed for, and in fact has paid for, and continues to this day to pay for the education of the one child born of this marriage through college and will be available for the child's use at graduate school. The child is no longer a minor, but the trust remains in place for his continued use.

32. The parties' present home has an estimated value in excess of \$300,000.00. Title to it has always been and is currently being kept in the name of both parties as tenants by the entireties, as has an additional parcel of property. Further, the contents of the home in question, of considerable

value, are at least in part owned jointly by the parties and have already been claimed and taken by Plaintiff.

33. The facts reflect that Plaintiff was aware of and Defendant divulged to Plaintiff the nature and value of Defendant's assets, properties, liabilities and obligations, and Plaintiff was aware of the financial condition of the Defendant, as well as his obligations and liabilities at the time of the execution of the agreement in question.

LAW

The two issues before this Court are as follows:

- (1) Whether the trial court erred in enforcing the parties' prenuptial agreement; and
- (2) Whether the trial court erred in its award of alimony to the Plaintiff.

We review findings of fact by the trial court *de novo* upon the record, accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). Because the trial court is in a better position to weigh and evaluate the credibility of the witnesses who testify orally, great weight is given to the trial court's findings on issues involving credibility of witnesses. Randolph v. Randolph, 937 S.W.2d 815 (Tenn. 1996); Gillock v. Board of Professional Responsibility, 656 S.W.2d 365, 367 (Tenn. 1983).

In the wake of Cary v. Cary, 937 S.W.2d 777 (Tenn. 1996), and Randolph v. Randolph, 937 S.W.2d 815 (Tenn. 1996), it is now well settled that prenuptial agreements are enforceable in Tennessee provided that certain prerequisites are met. A prenuptial agreement entered into by two parties "freely, knowledgeably and in good faith and without exertion of duress or undue influence" shall be enforceable. T.C.A. § 36-3-501; See also, Cary v. Cary, 937 S.W.2d 777 (Tenn. 1996); Randolph v. Randolph, 937 S.W.2d 815 (Tenn. 1996); Perkinson v. Perkinson, 802 S.W.2d 600 (Tenn. 1990).

A party seeking to enforce an antenuptial agreement must prove by a preponderance of the evidence that the party seeking to avoid the agreement had a knowledge of the full nature, extent and value of the proponent spouse's assets.

Randolph, Id. Proof of knowledge requires that either a full and fair disclosure of the nature, extent and value of the proponent party's assets was provided to the party seeking to avoid the agreement or that such disclosure was unnecessary because the party seeking to avoid the agreement had independent knowledge of the full nature, extent and value of the proponent spouse's holdings. Id. Although proof that the party seeking to avoid the agreement procured independent counsel to review the agreement will overcome the knowledge requirement, independent counsel is but one factor to consider when deciding whether a party entered into an agreement with knowledge. Id.

Although the Plaintiff denied meeting with the Defendant and his attorney to discuss the prenuptial agreement, the trial court found that the parties met in the office of the Defendant's attorney one month prior to the execution of the prenuptial agreement to discuss the terms, conditions and purposes of the agreement. The trial court also found that the Defendant's attorney advised the Plaintiff to retain separate counsel in order to review the prenuptial agreement, but the Plaintiff was satisfied to move forward without the assistance of separate counsel. The trial court further found that "there was a discussion about the properties and assets that the Defendant Charles Boone owned or in which he had an interest" and that there was a "discussion concerning the obligations which Charles Boone had, 'including his obligations arising from his prior marriage and the fact that several properties or investments were subject to outstanding liabilities or obligations.'" Moreover, the agreement in question which the Plaintiff signed two days before the parties' marriage provided as follows:

[w]HEREAS, Boone has divulged to Haley [the Plaintiff] and fully acquainted her with a knowledge of his assets, properties, liabilities and obligations heretofore, and Haley acknowledges that she is aware of the financial condition and estate of Boone at this time, as well as his obligations and liabilities;

The Plaintiff contends that she signed the agreement under duress because the agreement was signed two days prior to the parties' marriage. As found by the trial court, however, the facts show that the Plaintiff discussed the agreement with the Defendant and his attorney approximately one month prior to the marriage and that the Plaintiff was

provided the opportunity to obtain separate counsel but declined to do so. Under these circumstances, we agree with the trial court's finding that the Plaintiff entered into this agreement freely, knowledgeably, in good faith and without exertion of duress or undue influence, and we affirm the trial court's decision to uphold the agreement.

The Plaintiff also argues that the decision in Minor v. Minor, 863 S.W.2d 51 (Tenn. Ct. App. 1993) (holding that a period in excess of twelve years is not a reasonable time for the enforcement of a reconciliation agreement), controls the disposition of the present case. We, however, do not find this decision to be dispositive to the facts of this case. Minor involved the enforcement of a reconciliation agreement. The present case involves the enforcement of a prenuptial agreement. Tennessee Code Annotated § 36-3-501 provides as follows:

Notwithstanding any other provision of law to the contrary, except as provided in § 36-3-502, any antenuptial or prenuptial agreement entered into by spouses concerning property owned by either spouse before the marriage which is the subject of such agreement shall be binding upon any court having jurisdiction over such spouses and/or such agreement if such agreement is determined in the discretion of such court to have been entered into by such spouses **freely, knowledgeably and in good faith and without exertion of duress or undue influence** upon either spouse. The terms of such agreement shall be enforceable by all remedies available for enforcement of contract terms. (emphasis added)

Thus, the only elements required under the statute for the enforcement of a prenuptial agreement are that the agreement be entered into freely, knowledgeably, in good faith and without exertion of duress or undue influence. Because these are the sole factors to consider when determining the validity of an antenuptial agreement, the "length of time that the marriage lasted is not relevant to the fairness of the agreement." Perkinson v. Perkinson, 802 S.W.2d 600, 603 (Tenn. 1990). Thus, we conclude that the Plaintiff's contention that the agreement is too old to be enforced is without merit.

We agree, however, with the Plaintiff's contention that the trial court abused its discretion in limiting the award of alimony in this case to temporary alimony. Tennessee Code Annotated § 36-5-101(d) provides as follows:

[I]t is the intent of the general assembly that a spouse who is economically disadvantaged, relative to the other spouse, be rehabilitated whenever possible by the granting of an order for payment of rehabilitative,

temporary support and maintenance. Where there is such relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in this subsection, then the court may grant an order for payment of support and maintenance on a long-term basis or until the death or remarriage of the recipient except as otherwise provided in subdivision (a)(3).

Under the statute, alimony *in futuro* is appropriate only where there is relative economic disadvantage and rehabilitation of the disadvantaged party is not feasible. Self v. Self, 861 S.W.2d 360, 361 (Tenn. 1993). The trial court is assigned the responsibility and the discretion to fashion an award that is appropriate under the circumstances of each case. T.C.A. § 36-5-101; Self, 861 S.W.2d at 361. When determining an appropriate amount of alimony to award a party, the court shall consider all relevant factors including:

- (A) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (B) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;
- (C) The duration of the marriage;
- (D) The age and mental condition of each party;
- (E) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (F) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;
- (G) The separate assets of each party, both real and personal, tangible and intangible;
- (H) The provisions made with regard to the marital property as defined in § 36-4-121;
- (I) The standard of living of the parties established during the marriage;
- (J) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (K) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- (L) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

T.C.A. § 36-5-101(d).

Based on the undisputed evidence presented at trial, we conclude that an award of rehabilitative alimony is not appropriate in this case. In consideration of the disparity in the parties' earning capacities, the Plaintiff's age at the time of the divorce, the twenty-seven year duration of the marriage, the parties' standard of living during the marriage and the intangible contributions that the Plaintiff made during the parties' marriage, we agree that this is an appropriate case for an award of alimony *in futuro*. We, therefore, modify the trial court's award of \$4,500.00 per month in alimony for two years and \$3,000.00 per month in alimony for the following ten years to provide that the Plaintiff receive an award of permanent alimony in the amount of \$4,500.00 per month, to terminate upon plaintiff's death or remarriage.

With the exception of the foregoing modification of the alimony award, the decision of the trial court is hereby affirmed. Costs on appeal shall be divided equally between the parties.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

TOMLIN, Sr. J.