

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

October 29, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

MELISSA GAIL KUYKENDALL) KNOX COUNTY
WILLIAMS) 03A01-9705-CV-00167
)
Plaintiff - Appellee)
)
v.) HON. BILL SWANN,
) JUDGE
)
STEVEN THOMAS KUYKENDALL, SR.)
)
Defendant - Appellant) AFFIRMED AND REMANDED

DAVID L. VALONE and SAMUEL W. BROWN OF KNOXVILLE FOR APPELLANT
CHARLES H. CHILD and ALEXIS M. SMITH OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P. J.

Steven Thomas Kuykendall, Sr., appeals a decree of the Circuit Court for Knox County which invalidated an antenuptial agreement between him and his then-wife, Melissa Gail Kuykendall, granted her a divorce and divided the property of the parties.

M. Kuykendall raises two issues on appeal, as follows:

I. The Trial Court erred in refusing to enforce the Antenuptial Agreement between the parties in this cause.

II. The Trial Court erred in awarding attorney's fees to the Plaintiff/Appellee, such attorney's fees being unnecessary had the Trial Court enforced the Antenuptial Agreement between the parties.

Before addressing the facts, we first observe that antenuptial agreements are favored by the public policy of this State. Hoyt v. Hoyt, 213 Tenn. 117, 372 S.W2d 300 (1963). We also note that such agreements are specifically approved by T. C. A. 36-3-501:

36-3-501. Enforcement of antenuptial agreements.--
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.

The term "knowledgeably" as used in the Statute has been construed to mean a full and fair disclosure of the extent of the estate of one seeking to enforce the agreement prior to its execution. Wilson v. More, 929 S.W2d 367 (Tenn. App. 1996); Williams v. Williams, 868 S.W2d 616 (Tenn. App. 1992).

The parties were married on November 22, 1987, but began living together some four months prior thereto, even though M. Kuykendall at that time was still married to her former husband, Billy William Roberts, whom she divorced by decree entered October 23, 1987. The antenuptial agreement was drafted by M. Kuykendall's attorney and presented to M. Kuykendall in the attorney's office. She was given the opportunity of consulting a lawyer, but chose not to do so and signed it about 15 minutes after it was presented. At that time M. Kuykendall was pregnant with M. Kuykendall's child.

The antenuptial agreement, which was signed on November 16, 1987, six days before the parties were married, provides as pertinent to this appeal:

The following sets forth the background of this Agreement:

(A) A marriage is about to be solemnized between STEVEN THOMAS KUYKENDALL and MELISSA BRADSHAW both being of legal age.

(B) Melissa Bradshaw acknowledges that she has been fully advised, to her satisfaction, of her legal rights and obligations, and Steven Thomas Kuykendall acknowledges that he has been fully advised of his legal rights and obligations. Each acknowledges that they have fully considered their respective pecuniary conditions and situations, their mutual rights and obligations and the effect and consequences of all provisions of this Agreement.

(C) Each party owns property, real, personal, and mixed, in her and his own name, and has fully informed the other of the respective financial condition of each.

. . . .

1. The contemplated marriage of the parties shall not, in any manner whatsoever, alter, change, or affect their current legal rights in respect to their respective real, personal and other property whatsoever, nor shall the event of marriage have any effect of any type, nature or description upon the legal rights of their respective heirs, executors, administrators or assigns. Each of the parties hereby disclaims all rights of descent, distribution, dower, curtesy and other rights in and to the property and the estate of the other, except as herein provided.

2. Each of the parties shall have, keep and maintain the sole ownership, control and enjoyment of, and shall have the exclusive right to dispose, during his or her life or by last will and testament or other testamentary disposition, any and all property, real, personal or mixed, that he or she now owns or is possessed of, or hereafter may acquire or receive, as his or her absolute property, without interference by or from the other, in the same manner as if the marriage had not taken place.

. . . .

6. If, and in the event that the parties shall be married as contemplated by this Agreement, and thereafter be divorced, or live apart (except as the result of illness or impairment), each of the parties does hereby covenant and agree, irrespective of fault, to waive, relinquish and release the other of, from and on account of all rights, claims and demands of every type, nature or description, including (without limitation), alimony, support and maintenance in respect to the other, except as follows:

(A) First Party and Second Party agree that all household goods and furnishings shall be equally divided.

(B) First Party shall pay to the Second Party the sum of One thousand (\$1,000.00) Dollars and shall furnish Second Party with one of the family automobiles.

(C) First Party agrees that if any children are born of the marriage and the marriage is terminated, First Party shall pay as child support the sum of One Hundred Fifty (\$150.00) Dollars per month.

(D) That each party shall be responsible for his or her individual debts.

7. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each other term and provision shall be valid and enforced to the extent permitted by law, but only to the extent that the same continue to reflect fairly the intent and understanding of the parties as expressed by this Agreement taken as a whole.

The sole attack on the antenuptial agreement by Mr. Kuykendall is the following statement by the Court relative to the fact that Ms. Kuykendall was pregnant at the time the agreement was signed:

That circumstance, had it been disclosed in the antenuptial agreement, would make this antenuptial agreement water tight, but it's not here. It does not say, Melissa is pregnant with Steven's child, and nevertheless enters into this agreement.

In these days of gender neutrality it is perhaps inappropriate to suggest that a person carrying a child out of wedlock is under duress, I don't know, but had it been disclosed in the antenuptial agreement it would have been upheld, but it is not disclosed. Does this rise to the ability of this Court to say that the wife cannot have entered into this agreement freely, no, but it is a factor which makes it extraordinarily difficult for this Court to uphold the antenuptial agreement.

We agree with Mr. Kuykendall that the fact the antenuptial agreement did not recite that Ms. Kuykendall was pregnant is an insufficient ground for setting it aside when this fact was known to both parties.

The Trial Court, however, made certain other findings of fact which leads us to question whether the agreement omitting the fact of pregnancy was the sole reason for the Trial Court's action:

The Court finds that the husband did not fully disclose his financial affairs to the wife. He did not make great efforts to say, this is everything I own. I have an account at Home Federal, I have an account at First Tennessee, I have an account here, I have an account there, these are the balances and you're not to have any part of them, right. She says, right, I'm not. Did not make such a disclosure. Now, the Court also finds, however, that he did answer such questions as she put to him during this period of time, this three week period of time. Touching upon full disclosure, the husband did not bend over backwards to say this is everything I have and Perkinson [Perkinson v. Perkinson, 802 S.W2d 600 (Tenn.1990)], does not make that requirement. It must be fully, fully knowledgeable.

The foregoing finding of fact relative to Mr. Kuykendall's reluctance to disclose his financial condition is supported by his own testimony:

Q On that occasion did you have bank accounts?

A Correct.

Q Did you write those bank accounts down on a sheet of paper?

A Yes.

Q You did?

A Yes.

Q Did you show and tell her the balance of those accounts?

A No.

Q Did you tell her the items of properties that you had or the values of any of the assets you had?

A Yes.

Q Did you write that down on a sheet of paper?

A No, we discussed it.

Q Where did you discuss it?

A I believe -- it was discussed during the conversation of the agreement, I think in the living room of my home.

Q When was that in relation to writing this down, or the execution of the document?

A When?

Q Yes, sir, was it a day before, a week before?

A It was at least two -- I'd say at least a week in advance, a week or two weeks, three weeks in advance. In between that three week time period.

Q Do you have here today anything that summarizes that information that you gave her?

A No, I don't -- I can't -- I don't have anything like that.

Q Well, do you have anything written down that you gave her?

A This right here.

Q Well, that's the antenuptial agreement.

A That's correct.

Q Did you give her anything else in writing about your assets?

A The only way I can answer that is that she had been to all the properties -- all the properties I've owned she had been in, on and to before the signing of this document. She knew very well what I had. I mean she knew -- all the properties that I have she had knowledge of.

Q My question was, did you give her anything in writing about any of these properties?

A No.

Q Did you give her any information about mortgages, debt balances, your overall financial?

A That was not part of this nuptial agreement.

Q Did you disclose to her what your income was?

A I can't answer that question.

Q You don't recall?

A I don't recall.

Q Did you at that time have retirement benefits?

A Correct.

Q Did you give her any brochures, documents, handbooks regarding that?

A Not that I recall.

Q Did you authorize to her the release so that she could go and get that information?

A We weren't married, she had no right to that information.

Q Did you authorize the release?

A No, because we done a nuptial agreement, she has no right to those options.

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Q Your attitude is that she was not entitled to that information; is that correct?

A That is true.

Q And therefore you weren't obligated to disclose her any information about your assets.

A that was my personal, my personal, my personal assets.

Q And you saw to it that you didn't give that information to her.

A It wasn't -- it had nothing to do with her.

While the record does disclose that at the time of the marriage M. Kuykendall was apprised of two parcels of real property owned by M. Kuykendall (one of which was sold and another purchased during the course of their marriage), there is no showing that she was fully apprised of the amount of his pension, the value of the property, indebtedness owed, bank accounts, and such.

It is true that M. Kuykendall was not concerned at the time she signed the agreement that their child would be destitute, believing that M. Kuykendall would support it, but was concerned that the child be legitimate, and that she would not be turned out of M. Kuykendall's house without being able to employ the rights accorded a wife.

In light of the foregoing testimony and findings of fact by the Trial Court, we conclude that the evidence does not preponderate against his finding of fact that full disclosure was not made, nor that M. Kuykendall was subject to duress sufficient to void the agreement.

Although no specific issue is raised by M. Kuykendall, which we suggest is the better practice, she does make an argument in her brief that the Trial Court should have been more generous in his award of property to her. Our review of the record persuades us that, although the award was not equal it

was, under the facts of this case, equitable and, consequently, will not be disturbed.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings, if any, as may be necessary and collection of costs below. Costs of appeal are adjudged against M. Kuykendall and his surety.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Clifford E. Sanders, Sp. J.