

Six Cases To Know About Antenuptial Agreements

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Gross v. Gross

11 Ohio St.3d 99 (1984)

Syllabus by the Court

1. Antenuptial agreements containing provisions for disposition of property and setting forth amounts to be paid as sustenance alimony upon a subsequent divorce of the parties are not contrary to public policy.

2. Such agreements are valid and enforceable (1) if they have been entered into freely without fraud, duress, coercion, or overreaching; (2) if there was full disclosure, or full knowledge and understanding of the nature, value and extent of the prospective spouse's property; and (3) if the terms do not promote or encourage divorce or profiteering by divorce.

3. Such agreements, if otherwise found to be valid, are not abrogated as to either party for marital misconduct after marriage, in the absence of an express provision in the agreement to the contrary.

4. In a judicial review of such an agreement, upon motion for modification, at any subsequent separation or divorce proceeding of the parties, provisions setting forth maintenance or sustenance alimony must meet the additional test of conscionability at the time of the divorce or separation.

Fields v. Fields

92-LW-2558

April 8, 1992
(Summit App. 15235)

Antenuptial Agreement was followed by the trial court, except the spousal support waiver. The trial court awarded temporary spousal support and the appellate court affirmed.

“The trial court also impliedly concluded that it had the authority to award temporary spousal support. During the pendency of this divorce, the court had authority under R.C. 3105.18 to award reasonable temporary spousal support to either party. Richard contends that the court had no authority to award temporary spousal support because he and Deborah had agreed that the payments covered by the agreement would be in lieu of Deborah's right to any spousal support. However, the trial court explained in its order of August 1, 1991, that it could not be bound by the antenuptial provision with respect to temporary spousal support.

Temporary spousal support, by the very terms of Rc. 3105.18 can be awarded "[d]uring the pendency of any divorce." Richard filed his original complaint on July 26, 1989. The divorce was not granted until July 3, 1991. The antenuptial agreement did not provide Deborah with any distribution from Richard until "either party procure[d] a decree of divorce ***." Thus, according to the agreement, Deborah would receive nothing during this two-year period. Even antenuptial agreements which do provide for spousal support must be conscionable at the time of the divorce or separation. Gross, supra, at 109. Unconscionability can be found in a number of circumstances including a changed standard of living occasioned by the marriage, where a return to the prior living standard would work a hardship on the spouse. Id. at n. 11.

Therefore, it was not unreasonable for the trial court to refuse to enforce the agreement with respect to temporary support, and to order Richard to pay most of the credit card debt as a marital debt and in lieu of ordering any temporary support. The second and fourth cross-assignments of error are overruled.”

Mulvey v. Deal Mulvey
96-LW-5471
December 4, 1996
(Summit App. 17707)

Wife’s counsel prepared an antenuptial agreement which was signed one day before the marriage. It provided that Wife would receive \$100,000 in cash from Husband if their marriage lasted less than three years. Neither party contested the validity of the antenuptial agreement. Husband filed for divorce 15 months after the wedding.

Trial court awarded Wife \$100,000 less one-half of the \$18,991 in tax liabilities incurred during the marriage. Both sides appealed. Affirmed.

Citing *Fletcher v. Fletcher* (1994), 68 Ohio St.3d 464, the appellate court found:

“A prenuptial, or antenuptial, agreement is a contract to which the law of contracts applies. *Id.* At 467. Therefore, the general rules of contract interpretation and application are applicable. *Id.* However, where a valid prenuptial contract is silent as to an aspect of division or distribution of marital property or debt, the trial court must then address those issues ignored by the agreement. See, e.g., *Adams v. Chambers* (1992), 82 Ohio App.3d 462; *Fields v. Fields* (Apr. 8, 1992), Summit App. No. 15235, unreported.

Hoffman v. Dobbins
2009-Ohio-5157
September 30, 2009
(Summit App. 24633)

Couple entered into an antenuptial agreement prior to their marriage in 2000. The agreement provided a waiver of survivorship rights and benefits upon death. In 2003 husband and wife executed an amendment to the antenuptial agreement revoking any provision concerning the death of either party. Husband died in 2007. Husband's estate and his widow each filed for declaratory relief concerning the validity of the antenuptial agreement. The widow, however, wanted the court to also uphold the post-marriage amendment. The estate opposed that. The trial court granted the estate summary judgment finding the antenuptial agreement was valid but the amendment was prohibited by law and against public policy. Affirmed in a split decision.

The majority found:

“Postnuptial agreements, with specific limited exceptions, are not valid in Ohio. *Burgin v. Burgin* (Aug. 5, 1987), 1st Dist. No. C-860628. "A husband and wife cannot, by any contract with each other, alter their legal relations, except that they may agree to an immediate separation and make provisions for the support of either of them and their children during the separation." R.C. 3103.06.

There is some authority for the proposition that a husband and wife may revoke or rescind an antenuptial agreement during their marriage. See, e.g., *Dalgarn v. Leonard* (1948), 87 N.E.2d 728, 731 (holding that an antenuptial agreement is presumed to have remained in effect continuously in the absence of evidence that the parties had terminated the agreement); *Simoni v. Simoni* (1995), 102 Ohio.App.3d 628. While neither party disputes this authority, this Court does not reach the issue of the propriety of the revocation of an antenuptial agreement because this case merely involves the attempted amendment, or partial revocation, of an antenuptial agreement.”

But the dissent would allow a partial revocation of the antenuptial agreement because, in this case, it would allow the couple to restore rights given up in the antenuptial, not limit marital rights.

"In *Du Bois v. Coen* (1919), 100 Ohio.St. 17, the Supreme Court of Ohio examined a prior version of the two statutes which contain identical wording to the current version. *Du Bois* addressed the issue of whether "a husband and wife [could], during coverture and without contemplating separation, enter into a valid legal contract whereby one releases to the other all claims in the other's property, during lifetime or after death, in consideration of money paid or promised to be paid therefore[.]" *Id.* at 20. In *Du Bois* the husband and wife each released all claims to each other's property which they could have maintained under existing law because of their marital relationship. *Id.*"

..."The facts of the present appeal are directly opposite to the facts of *Du Bois*. Here, the parties contracted to revoke the portion of their antenuptial agreement which barred both parties from all rights of inheritance upon the death of either party. As a result of the partial revocation, the parties would not be releasing claims they are entitled to retain by law as married persons as was the case in *Du Bois*, but instead would be reinstating their expectancies in each other's estates allowed by law by virtue of their marriage. Thus, under *Du Bois* and under R.C. 3103.05 and R.C. 3103.06, such an agreement is permissible given that it did not seek to deprive either party of any legal or property rights which they have by virtue of their marriage. If anything, their agreement sought to restore legal rights that they had contracted away in the antenuptial agreement."

Mann v. Mann

040510 OHCA9

April 5, 2010

(Lorain App. 09CA009685)

Couple dated beginning in 1996 while woman worked and man did not due to chronic alcoholism. Husband's condition exacerbated by medical malpractice. Parties married in 2002. The day before the wedding they signed an antenuptial agreement. Wife said she was "broke" at that time and that her intended's finances were even worse.

Antenuptial kept separate any medical malpractice proceeds Husband might receive and provided a waiver of spousal support.. After marriage Husband was awarded more than a million dollars. Wife filed for divorce in 2007. Wife Moved to invalidate the antenuptial agreement. Wife claimed that the agreement was unconscionable. But the appellate court opined that all the antenuptial agreement did was keep Husband's settlement money intact for his rehabilitation and care. She also argued that signing the agreement the day before the wedding, without knowing what it was, and without the advice of counsel constituted coercion.

The appellate court stated that the document title was in bold typeface, in a larger font than the rest of the document and read "Antenuptial Agreement." As to the day-before-the-wedding argument, the court cited *Fletcher v. Fletcher*, below.

Fletcher v. Fletcher

68 Ohio St.3d 464 (1994)

SIZE MATTERS

"SYLLABUS BY THE COURT

1. When an antenuptial agreement provides disproportionately less than the party challenging it would have received under an equitable distribution, the burden is on the one claiming the validity of the contract to show that the other party entered into it with the benefit of full knowledge or disclosure of the assets of the proponent. The burden of proving fraud, duress, coercion or overreaching, however, remains with the party challenging the agreement.

2. When an antenuptial agreement provides disproportionately less than the party challenging it would have received under an equitable distribution, the party financially disadvantaged must have a meaningful opportunity to consult with independent counsel."

Wife argued that she was coerced into signing the antenuptial agreement because it was presented to her to sign the day before the wedding. In *Fletcher* the Court wrote:

"There was evidence in the record to support the conclusion that Dyane knew her rights incident to divorce. Indeed, the trial court wrote, "There is no doubt in this court's mind that Judge Kern [who presided over Dyane's prior dissolution] fully questioned the parties concerning the unequal division and that first [Dyane] understood the same or Judge Kern would not have granted the dissolution." It is agreed that Dyane was given the opportunity to consult with independent counsel, but refused. Although the parties executed the agreement the day before the wedding, the trial court could reasonably have concluded that, because of the small size and informality of the impending wedding, it could have been postponed had Dyane wished to consult counsel. Finally, there is some evidence from which to conclude that Dyane read the agreement and understood its contents prior to signing it."

“ ...

The facts of this case, however, lend some weight to appellant's argument of overreaching. The antenuptial agreement was presented to Dyane on the eve of the wedding. Although the trial court apparently found that this circumstance did not constitute coercion, it could reasonably have found otherwise. Our research has disclosed that it is a common practice to present antenuptial agreements at the eleventh hour before the wedding ceremony. See, e.g., *In re Marriage of Matson* (1985), 41 Wash.App. 660, 705 P.2d 817 (sample agreement first seen one week before wedding and executed on eve of same); *In re Marriage of Norris* (1981), 51 Ore.App. 43, 624 P.2d 636 (first presented and executed on wedding day); *Lutgert v. Lutgert* (Fla.App.1976), 338 So.2d 1111

68 Ohio St.3d 470

(presented and executed on day of wedding); *Bauer v. Bauer* (1970), 1 Ore.App. 504, 464 P.2d 710 (presented on wedding day). Prenuptial agreements are often drafted in such a way as to be nearly incomprehensible to a layperson. For this reason, we hold that when an antenuptial agreement provides disproportionately less than the party would have received under an equitable distribution, the party financially disadvantaged must have a meaningful opportunity to consult with counsel. The presentation of an agreement a very short time before the wedding ceremony will create a presumption of overreaching or coercion if, in contrast to this case, the postponement of the wedding would cause significant hardship, embarrassment or emotional stress.”