

REL: July 31, 2020

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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2020

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Robert E. Denson, Jr.

v.

Deborah M. Denson

Appeal from Baldwin Circuit Court
(DR-17-901453)

DONALDSON, Judge.

Robert E. Denson, Jr. ("the husband"), appeals from a judgment of the Baldwin Circuit Court ("the trial court") divorcing him from Deborah M. Denson ("the wife"). On appeal, the husband contends that the award to the wife of an equity

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interest in certain real property that was used as the parties' marital residence ("the house") and the failure to award attorney fees to him are contrary to the terms of the parties' prenuptial agreement ("the agreement"). The agreement contains the following pertinent provisions:

"WHEREAS, each of the parties owns certain assets in his or her own name, and each has informed one another of the respective financial condition of each, a statement of the estimated net worth and listing of substantially all of their assets having been prepared by each of the parties and attached hereto as Exhibits 'A' and 'B', and incorporated herein by reference; and

"WHEREAS, it is desired by [the husband] and [the wife] that such marriage shall not in any way change their presently existing legal rights to their respective properties, including the right to dispose of their separate estates to their heirs (exclusive of the parties hereto) or otherwise

".....

"WHEREAS, the parties desire to accept the provisions of this Agreement in full discharge and satisfaction of all rights or claims that may accrue to each of them upon the death of the other, or upon their separation or divorce;

"NOW, THEREFORE, in consideration of the above premises, of the contemplated marriage of the parties, and of the mutual promises and undertakings herein contained, it is hereby agreed by and between the parties hereto as follows:

"1. After the finalization of the marriage between the parties, and except as hereinafter

provided, each of the parties shall separately retain all rights in his or her own property, both real, personal and mixed, and whether tangible or intangible or chose in action, or the proceeds derived therefrom, and, except as otherwise herein provided, each of them shall have the absolute and unrestricted right to dispose of such separate property free from any claims that may be made by the other by reason of their marriage, and with the same effect as if no marriage had been consummated between them.

"2. Each party shall have at all times the full right and authority, in all respects, the same as each would have had if not married, to use, enjoy, manage, lease, convey, encumber or otherwise dispose of such property as may belong to him or her, and to receive all monies, rents, issues, income and profits thereof without any restrictions whatever, and without interference from the other party.

"3. Each party, in the event of a separation, divorce, or annulment (regardless of which party initiates such action) shall have no right against the other by way of claims for support, alimony, attorney's fee, or costs of division of property, except as set forth hereinafter. Nothing in this Agreement is intended, however, to affect the right of either party to make claims against the other for child support.

"4. The parties affirm that they love one another. This Agreement is not in contemplation of divorce, nor is it to be thought of, construed or intended to be an agreement in contemplation of divorce or separation; provided, however, that the parties agree that, should they become divorced, each will receive one-half of all property, real, personal or mixed, which was titled in their joint names, whether as joint tenants with right of survivorship, or as tenants in common and regardless of which party furnished the consideration for such

property. This shall be in full settlement of any rights either party may have to the property of the other, either as alimony or otherwise, and each agrees that such is fair and reasonable in satisfaction of all rights that might otherwise accrue against the other.

". . . .

"9. In the event that either of the parties desires to mortgage, sell or convey all or any portions of his or her property or estate, whether real, personal or mixed, and whether tangible or intangible or chose in action, each one will join in the deed of conveyance or mortgage or other instrument, as may be necessary, in order to effect such conveyance or mortgage. However, neither party shall be obligated by the terms of this Agreement to incur or in any way subject himself or herself to any liabilities which have been or shall at any time in the future be created by the other. Each party hereto agrees to sign any and all documents necessary in order to carry out the intent of this Agreement, including without limitation, a waiver of spousal rights under any qualified retirement plan of which either party is a beneficiary.

"10. It is expressly agreed that this Agreement is entered into with each party being represented or having had the opportunity to be represented by his or her respective independent legal counsel, and after a full and frank disclosure, and with knowledge on the part of each party as to the character, extent and approximate value of the estate of the other, and of all of the rights conferred by law upon each in the estate of the other as a result of their marriage, and it is the desire and wish of each of the parties hereto that all of their respective rights to the property and estate of the other which may have arisen because of their marriage should be completely abrogated by this Agreement.

".....

"13. Each party acknowledges that while the circumstances at the time of ... the termination of the marriage by divorce or legal proceedings may be different from those circumstances existing at the time that this Agreement is entered into, nonetheless, the parties, even in the event of a change of circumstances, agree to be bound by this Agreement.

"15. In the event that [the husband] or [the wife] should seek the advice of counsel, whether or not litigation is involved, due to the breach of this Agreement by the other party, the breaching party shall be responsible to pay the attorney fees and all court costs and other expenses associated therewith of the non-breaching party."

Exhibit A of the agreement lists the house and the other assets the husband owned at the time of the execution of the agreement. The list of the wife's assets in Exhibit B does not include the house. In Exhibit A, the house is valued at \$415,000, with a mortgage balance of \$318,392 as of July 30, 2004.

The trial court's judgment includes the following pertinent provisions:

"3. The court rules that the antenuptial agreement entered into by the parties on August 10, 2004 is enforceable. However, in July of 2006 the parties instituted a home equity line of credit with Citizens Bank. ... In so doing, the [the wife] pledged her interest in the home as security for any monies loaned on the line of credit. She was obliged

to do so under the terms of Paragraph [9] of the Antenuptial agreement. In addition, though, she pledged to be personally liable for the payment of monies borrowed under the line of credit. Paragraph [9] of the Antenuptial Agreement specifically provides that she was not obligated to do this. In addition, it is clear that the [the wife] contributed monies in various ways to the joint household checking account from which mortgage payments and other expenses related to the maintenance of the house were paid. She secured a gift or a loan (depending on one's perspective) in the amount of \$5000 from her daughter to help keep the home out of foreclosure. She contributed her inheritance from her father's estate to the joint account. Although it was argued that she purchased a car with these monies, nonetheless this was a contribution to the joint household expenses which included payment of the mortgage. This pooling of resources and joint undertaking related to the property is sufficient to take the marital home out of the antenuptial agreement.

"4. [The husband] is awarded the marital home place as his separate property. The value of the marital home is approximately \$500,000. The current mortgage on the property is approximately \$230,000. [The husband] owes an additional \$100,000 on 'personal loans' that he obtained to help pay off the home equity line of credit. [The husband] shall be responsible for payment of these indebtednesses. Making an allowance for the costs of a sale, the available equity in the home is approximately \$120,000. [The wife] is awarded \$60,000 for her share of the equity in the marital home place. This shall be a judgment against [the husband] in the amount of \$60,000. It is to be paid within 90 days of the date of this order."

The trial court determined that the agreement was enforceable, and the husband has not raised an issue regarding

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the validity of the agreement. The husband argues, however, that the trial court did not enforce the terms of the agreement as written.

"Although the ore tenus presumption applies to the trial court's findings of fact, no such presumption adheres to the trial court's application of the law to those facts. Ex parte Agee, 669 So. 2d 102, 104 (Ala. 1995). The husband's arguments are based upon the interpretation of certain provisions and terms in the parties' antenuptial agreement; such interpretations, like the interpretation of unambiguous contracts, are questions of law. See Agee, 669 So. 2d at 105; Stacey v. Saunders, 437 So. 2d 1230, 1233 (Ala. 1983)."

Laney v. Laney, 833 So. 2d 644, 646 (Ala. Civ. App. 2002).

"The courts of this state favor compromise and settlement of litigation, particularly in cases involving families. Junkin v. Junkin, 647 So. 2d 797 (Ala. Civ. App. 1994). '[A] settlement agreement which is incorporated into a divorce decree is in the nature of a contract.' Smith v. Smith, 568 So. 2d 838, 839 (Ala. Civ. App. 1990). A divorce judgment should be interpreted or construed as other written instruments are interpreted or construed. Sartin v. Sartin, 678 So. 2d 1181 (Ala. Civ. App. 1996). 'The words of the agreement are to be given their ordinary meaning, and the intentions of the parties are to be derived from them.' Id. at 1183. Whether an agreement is ambiguous is a question of law for the trial court. Wimpee v. Wimpee, 641 So. 2d 287 (Ala. Civ. App. 1994). An agreement that by its terms is plain and free from ambiguity must be enforced as written. Jones v. Jones, 722 So. 2d 768 (Ala. Civ. App. 1998)."

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R.G. v. G.G., 771 So. 2d 490, 494 (Ala. Civ. App. 2000). The trial court did not find any ambiguity in the pertinent provisions of the agreement, and neither party has contended that the pertinent provisions are ambiguous. Therefore, the trial court was not permitted to "dispose of property addressed in [the] antenuptial agreement in a manner that [was] inconsistent with that agreement." Hubbard v. Bentley, 17 So. 3d 652, 654 (Ala. Civ. App. 2008).

The trial court found that the house was not subject to the agreement because the wife had assumed personal liability on a home-equity line of credit associated with the house even though she was not obligated to do so under paragraph 9 of the agreement and because the wife had made contributions to a joint account from which mortgage payments for the house were drawn. In Brown v. Brown, 26 So. 3d 1210, 1219 (Ala. Civ. App. 2007), this court reversed a judgment awarding a wife a portion of her husband's bank account, stating:

"[T]he trial court stated that it had found that 'the funds of that account were used in the furtherance of the marriage and, therefore, not subject to the antenuptial agreement.' Although such a finding could, at the trial court's discretion, result in the determination that the account should be included as marital property subject to division pursuant to Ala. Code 1975, § 30-2-51(a), which

permits a trial court to consider property acquired before the marriage or by gift or inheritance if it was used for the common benefit of the parties, see Ex parte Durbin, 818 So. 2d 404, 408 (Ala. 2001); Ex parte Drummond, 785 So. 2d 358, 362 (Ala. 2000); and Bushnell v. Bushnell, 713 So. 2d 962, 964 (Ala. Civ. App. 1997), it would not prevent the account from remaining the separate property of the husband under the antenuptial agreement, which provides that property owned solely by the either party, whether it was in existence at the time of the execution of the agreement or was acquired during the marriage, remains that party's sole property. The antenuptial agreement does not contain a provision similar to that in § 30-2-51(a) making property used for the benefit of the marriage marital property. Thus, the trial court's division of the funds in the husband's [bank] account was in contravention of the antenuptial agreement and must be reversed. See McGiffert v. McGiffert, 627 So. 2d 972, 977 (Ala. Civ. App. 1993) (holding that a trial court may not dispose of property covered by an antenuptial agreement in any way but that prescribed by the agreement)."

(Footnotes omitted.)

Like the antenuptial agreement in Brown, the agreement in this case controlled the division of the parties' property, even if the trial court's findings could have otherwise supported the inclusion of the house as marital property that was subject to division under § 30-2-51(a), Ala Code 1975. Paragraph 9 of the agreement pertains to a situation in which an asset owned by one party is encumbered during the marriage and specifically provides that "neither party shall be

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obligated by the terms of this Agreement to incur or in any way subject himself or herself to any liabilities which have been or shall at any time in the future be created by the other." We do not construe paragraph 9 or any other provision of the agreement as allowing for the conversion of separate property used for the benefit of the marriage into marital property subject to division. Paragraph 4 of the agreement provides that, in the event of a divorce, each party would receive one-half of all property "titled in their joint names" and that such a division would constitute a full settlement as to the parties' jointly owned property. The agreement also provides that each party will retain all rights in his or her separately owned property. It is undisputed that the husband possessed sole title to the house before and during the marriage, and the trial court found that the house was his separate property. When the wife assumed personal liability for the home-equity line of credit associated with the house, the parties did not take action to change the title to the house, i.e., the title remained in the name of the husband alone. Although the trial court's reasoning for awarding the wife a portion of the equity in the house might have been

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valid if § 30-2-51(a) was applicable, the agreement was in this case valid and fully enforceable. Because the award of a portion of the equity in the house to the wife contravened the agreement, we reverse the judgment insofar as it awarded the wife an equity interest in the house and remand the cause to the trial court for proceedings consistent with this opinion.

The husband also argues that he is entitled to attorney fees pursuant to paragraph 15 of the agreement because, he asserts, the wife's seeking an equity interest in the house was a breach of the agreement. We, however, are not directed to any particular provision in the agreement that expressly and specifically prohibits the wife from seeking an equity interest in the house, and, furthermore, the husband does not otherwise explain with citation to legal authority how the wife's actions should be considered a breach of the agreement. See White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008) ("Rule 28(a)(10) [, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position."). Because the husband has not established that the wife breached the agreement, we cannot conclude that the husband was entitled to attorney fees under the agreement.

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Therefore, we affirm the trial court's judgment insofar as it denies an award of attorney fees to the husband.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Thompson, P.J., concurs.

Moore, Edwards, and Hanson, JJ., concur in the result, without writings.