

VS : SUPERIOR COURT
: J. D. OF
: AT
: MARCH 11, 2009

MEMORANDUM OF DECISION

The plaintiff, _____ and the defendant _____, whose birth name was _____, intermarried at Madison, Connecticut on October 29, 1994. There are no issue of the marriage. The Court has the requisite jurisdiction. The marriage has broken down irretrievably and is dissolved.

This matter has been bifurcated. The plaintiff claims that a premarital agreement dated October 28, 1994 is valid and thus the defendant is precluded from any award except for that set forth in the agreement. The Court must first decide the validity of this agreement. In the event that the premarital agreement is enforceable it is self-executing and the Court must singly find that the statutory criteria for a dissolution has been met. In the event the Court finds that the premarital agreement is unenforceable it shall enter orders based on testimony presented as to the issue of alimony and the distribution of the parties' assets. The husband claims that

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prior to the parties' marriage that a prenuptial agreement was entered into on October 28, 1994 that seriously limited his financial exposure.

The first claim is that the prenuptial agreement even if valid cannot be considered by the court because as a procedural matter it was not properly pleaded. While defendant cites authority that suggest that the court is barred from considering the agreement and the strict adherence to the proper procedures has not been followed, the husband makes no claim of surprise and no claim of prejudice.

The trial commenced on January 20, 2009 and was continued after a full day of hearing until January 23, 2009 to consider the issue of whether the validity of the prenuptial agreement had been properly interposed. Plaintiff cannot claim surprise because she was put on notice with a pleading dated May 23, 2008 as well as ample correspondence relating to the agreement. Fundamental rights cannot be defected by elevating form over substance. Plaintiff can claim neither surprise nor prejudice. The validity of the agreement must next be considered.

I _____, an attorney from Norwalk, testified that she represented the plaintiff in October of 1994 when she prepared a prenuptial agreement in behalf of the soon- to-be wedded husband. She no longer had a file but she vaguely remembered that _____, who shared space in the building she occupied, represented the defendant. She thought that at the time that Mr. _____ was not in her employ but subsequently he became employed by her. There is other

testimony that because the nuptial was performed the day after the agreement was signed, there was little time and thus the helter skelter manner of execution and delivery leaves the details obscured.

If ever a premarital agreement (Ex. 4) failed to pass muster the agreement that is the subject of this litigation stands out for several reasons.

The foremost reason that the premarital agreement is unenforceable is that the husband failed to provide full disclosure. Approximately four years after the agreement was entered into and signed husband received a lump sum distribution from his GTE pension in the amount of \$698,000. At the time he signed the prenuptial agreement on October 28, 1994, he had been working for GTE for more than 25 years. Husband testified that the value of GTE was at least \$100,000 but, nonetheless, it evolved into a lump sum payment of \$698,000 less than four years later. It should be noted that he was the Director of Financial Education and a Certified Management Accountant at GTE. When the Court considers that the plaintiff submitted a disclosure list to the defendant that his then assets totaled \$377,622.83 the failure to disclose his very substantial GTE pension was a material omission. For this reason alone the premarital agreement fails. In *McHugh v. McHugh*, 181 Conn. 482, 486 (1980), in a case of first impression, the Supreme Court held that : “The duty of each party to disclose the amount, character, and value of individually owned property, absent the other’s independent knowledge of the same, is an essential prerequisite to a valid antenuptial agreement containing a waiver of property rights.” As there was no evidence that the defendant had “independent knowledge”

of the plaintiff's retirement plans, there can be no doubt based upon the sworn testimony at trial that the plaintiff failed to fulfill his duty of providing full disclosure of his assets by omitting his GTE Pension Plan.

There are additional reasons why the premarital agreement is unenforceable. The agreement places the burden of obtaining full disclosure on each party with regard to the other's assets. It requires each party to perform due diligence. That burden shall not be wife's burden.

The issue as to whether the wife had independent counsel is very obscure and evidence offered by the husband to establish this is at least questionable. The Court has serious doubt and the husband has not met his burden of proof.

In entering its orders the Court must consider among the other criteria enumerated by statute the cause for the breakdown of the marriage.

The parties dated for ten years prior to their marriage and while there was some evidence that the wife and husband's family were not conciliatory and that wife objected to husband's office in the marital home, the husband's out of marriage liaisons were particularly egregious. It would serve no purpose to detail same but will be available to the husband if he seeks to have the Court articulate the details. Despite husband's behavior the wife tried hard to save the marriage.

ORDERS

The Court has carefully considered all the statutory criteria in entering its orders as they relate to the alimony and the distribution of the parties' assets. The Court has also considered the advance of \$265,000 given to the wife so that she could purchase a home in Clinton, Connecticut.

1. **ALIMONY**

The husband shall pay alimony to the wife in the amount of \$350.00 per week commencing March 20, 2009 until the death of either partner or the wife's remarriage or cohabitation.

2. **PROPERTY DIVISION**

AUTOMOBILES - Each party shall retain the vehicle that they drive, namely the husband shall retain the 2004 Chevy Blazer, and the wife shall retain the 2007 Rhondda CRV.

PERSONALTY - The parties shall divide all other personal property to their own mutual satisfaction. If they cannot agree, or if any items remain in dispute, the issues shall be submitted for binding arbitration the expenses for same to be equally divided.

REAL PROPERTY - The husband shall retain the marital residence at ...

The property has equity of

approximately \$527,000. The husband shall be solely responsible and shall indemnify and hold the wife harmless as the mortgage, taxes, insurance and any other operating costs relating to the marital residence from the date of divorce forward. The husband shall refinance the mortgage to remove the wife's name within 60 days from the date of divorce.

The wife shall retain the house at _____, CT _____. The property has equity in the approximate amount of \$265,000. The wife shall be solely responsible and shall indemnify and hold the husband harmless as to the mortgage, taxes, insurance and any other operating costs relating to the residence from the date of divorce forward.

BANK ACCOUNTS, INVESTMENTS, DEFERRED COMPENSATION, 401ks, IRAs and all other ASSETS

The parties shall retain their deferred compensation assets, free and clear from any claims by the other, excepting the husband shall transfer \$235,000 from his 401k to the wife. The joint bank account of approximately \$1,500 shall be the husband's property.

3. **MEDICAL INSURANCE**

Each party shall be solely responsible for obtaining their own medical and dental insurance.

4. **ATTORNEY'S FEES**

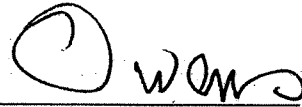
Each party shall be respectively responsible for their respective attorney's fees.

5. **DEBTS**

Each party shall be responsible for the debts listed on their financial affidavits.

Husband's boat, fishing gear, and yard equipment shall be his exclusively. Husband's interest in real estate in New Brunswick, Canada shall be his exclusively and wife shall quit claim to him any interest she may have therein.

Husband' SEP fund shall be his exclusively as well as the four accounts listed on his affidavit dated January 20, 2009.



OWENS, J.T.R.