
SUPERIOR COURT OF NEW JERSEY
Appellate Division
DOCKET NO. A-001179-97T1

)	Civil Action
Randi J. Margrabia)	
)	On Appeal from
Plaintiff / Respondent)	
)	A Final Judgment of the Superior
vs.)	Court of New Jersey, Chancery Division,
)	Family Part, Gloucester County
Joseph T. Margrabia)	
)	Sat below:
Defendant / Appellant)	Hon. John Tomasello, J.S.C.
)	

Appellant's Brief and Appendix

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Procedural History

On May 8, 1990, the parties executed an antenuptial agreement that controlled the distribution of assets in the event of a divorce. The antenuptial contained a valid choice of law provision mandating that Pennsylvania law would govern any dissolution proceedings between the parties. On October 3, 1995, plaintiff filed a domestic violence complaint and defendant was removed from the marital residence. On February 12, 1996, plaintiff filed for divorce.

The matter was tried in May of 1997. An oral decision was given on May 20, 1997. A written modification of this decision was issued on August 25. A Judgement of Divorce was signed on September 25, of 1997. The Notice of Appeal was timely filed on October 24, 1997.

Statement of Facts

On May 8, 1990, the parties to this dissolution action executed an antenuptial agreement while both resided in Pennsylvania. The agreement limited what property would be considered part of a marital estate, explicitly controlled the division of any marital estate, and contained a choice of law provision mandating that Pennsylvania law would apply if the marriage were dissolved. Plaintiff was represented by counsel, and both parties attached a full and complete disclosure of their assets. On May 12, 1990, they were married.

Following the 1992 birth of the parties son, Joseph T. Margrabia III, the parties they moved from Philadelphia to New Jersey. Because Defendant, an attorney in Pennsylvania, was not a member of the New Jersey bar he scaled down his Pennsylvania law practice in order to devote himself to studying for the New Jersey bar examination. He passed it on his second attempt, and was admitted in New Jersey on June 1, 1994. During this period, because he had given up so much of his Pennsylvania practice in order to devote himself to being admitted in New Jersey, his income dropped precipitously. During the same period, plaintiff, a self-employed graphic designer who worked out of a home office in the marital residence, saw her income rise from \$25,000 a year to over \$90,000. During the last two years of the marriage, she was the

supporting spouse while defendant began building a New Jersey law practice.

During this period, the parties' marital relationship disintegrated. Each would subsequently allege that the other had acted abusively during this time. On October 3, 1995, Defendant struck plaintiff on her arm, causing bruising. The defendant was arrested. The plaintiff obtained a temporary restraining order under the Prevention of Domestic Violence Act. Defendant admitted his conduct and a Final Restraining Order was issued on October 15, 1995. Since then, Defendant has not been to the marital residence.

On February 9, 1996, a complaint for divorce was filed. Defendant answered and counter-claimed, and the matter was tried before J.S.C. Tomasello on May 12, 13, 19, and 20 of 1997. At trial, Judge Tomasello noted the stipulation of both parties that the antenuptial agreement was valid and that Pennsylvania law controlled its interpretation. The stated purpose of the agreement was to address "property rights and any claim for care, support and maintenance or other similar payments." (Da 81). In spite of this clear language, plaintiff's counsel argued that the agreement was "silent" (3T 32-16) about various property rights and obligations created during the marriage, specifically marital debt and Plaintiff's Individual Retirement Accounts (IRAs) (Da 113). Plaintiff argued that New Jersey's Equitable Distribution Statute should control these areas "beyond the four corners of the Agreement" (1T 5-14 to 5-20).

The trial court plainly erred in accepting this argument. No agreement that by its explicit terms exists to determine "any and all claims, demands, liabilities and obligations . . . arising out of the marital relationship" (Da 90) can be said to "not govern the area of debts." (1T - 33-2 to 33-3). Despite the unambiguous language of the antenuptial agreement that the court found to be valid, the trial court applied New Jersey's equitable distribution statute. In so doing, Judge Tomasello erred in ignoring that a valid antenuptial agreement constitutes a complete waiver of the parties' rights to equitable distribution under N.J.S.A. 2A:34-23.1. Beyond this, the trial court erred by violating its own acknowledgment that the antenuptial was valid and that he was to apply

Pennsylvania law to its interpretation. The trial court should be reversed on these issues, and the matter should be remanded with instructions for the court to follow the antenuptial agreement. Plaintiff's complaint also included a Tevis count for domestic violence damages (Da 3-7). Pursuant to the parties' antenuptial agreement, Pennsylvania's law should have controlled the domestic tort action. Defendant maintains that, under the controlling caselaw, a tort that is directly related to the subject matter of a contract remains subject to the parties' choice of law provision.¹

The trial court rejected plaintiff's argument that she suffered from battered woman's syndrome (5T 14-24 to 15-1), but did find that five compensable incidents of domestic violence had occurred within the applicable statute of limitations. While giving his oral decision on May 20th, Judge Tomasello thoroughly reviewed the issue and made findings of fact supporting his decision to award plaintiff \$6,750 in compensatory damages, and \$5,000 in punitive damages (5T 15-22 to 19-8).

Following the trial, it was brought to the Court's attention that it had neglected to issue defendant a credit for \$28,621 of separate and exempt funds he had put toward the marital residence (Da 130). Judge Tomasello agreed that defendant was entitled to this credit, and re-adjusted his findings accordingly (Da 132). At the same time, and without any change in circumstances alleged (except that defendant now had a \$28,621 credit), the trial court increased the punitive and compensatory damages assessed against defendant so as to zero out the credit he received (Da 133).

While the trial court may properly have considered defendant's overall financial picture when assessing punitive damages, the obvious consideration of defendant's assets when readjusting the compensatory damage award constituted reversible error. This court should reverse the trial

¹ Defendant does not appeal the court's decision to apply New Jersey's Prevention of Domestic Violence Act nor the remedies granted thereunder, only the decision to apply New Jersey law to the economic issues surrounding defendant's damages.

court on this issue and adjust the compensatory damages to the amount given on the record prior to the Court's written modification of its decision.

☺

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED BY PERFORMING EQUITABLE DISTRIBUTION IN SPITE OF THE EXISTENCE OF A VALID ANTENUPTIAL AGREEMENT

At trial in this matter, there was no question that the parties' antenuptial agreement was valid, and that it contained an enforceable choice of law provision requiring Pennsylvania law to govern any dissolution proceedings between the parties. The plaintiff stipulated to this² (Da 114, 1T 4-21 to 4-24), the defendant stipulated to it (Da 101), and Judge Tomasello found that the antenuptial agreement was valid (1T 7-3 to 7-6).

Absent a finding of unreasonableness, New Jersey Courts are required to enforce valid antenuptial agreements. *See DeLorean v. DeLorean*, 211 N.J. Super. 432 (Ch.Div.1986). *See also Herr v. Herr*, 13 N.J. 79 (1953), *Massar v. Massar*, 279 N.J. Super. 89 (App.Div. 1995), *Orgler v. Orgler*, 237 N.J. Super. 342 (App.Div. 1989). Moreover, the agreement contained a valid choice of law requirement that mandated that Pennsylvania law be applied to any dissolution action "irrespective of where the parties may hereafter reside" (Da 92). Pennsylvania more strictly construes antenuptial agreements than New Jersey does, and it was conceded by plaintiff that the agreement would not be overturned under the controlling Pennsylvania caselaw. (3T 31-23). *See Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990).

The purpose of an antenuptial agreement is to remove the uncertainty of what may happen to

² Again, neither party to this action challenged the legitimacy of the antenuptial agreement, and the trial court found it to be valid. However, plaintiff's insinuation in her pre-trial memorandum (Da 113-114) and in her oral argument at trial that the agreement would not survive a New Jersey-based challenge merits a brief response. Plaintiff proposed that the agreement would fail because the agreement was presented three weeks before and signed four days prior to the marriage on a "take it or leave it basis" and because it mandated that separately acquired property would remain separate. These precise factors existed in the antenuptial agreement that survived challenge in *DeLorean v. DeLorean*, 211 N.J. Super. 432 (Ch.Div.1986), except that the agreement in the *DeLorean* case was **presented and signed** "hours" not days before the wedding, on the same "take it or leave it" basis. There was no argument made that would contradict the controlling facts: plaintiff reviewed the agreement with independent counsel, full disclosure was made, and plaintiff, the primary wage earner during the marriage, would not by any means be left destitute by enforcement of the agreement.

parties' assets in the event of divorce, and to prevent the possibility of an inequitable division of assets. For this reason, under both New Jersey and Pennsylvania law, the existence of a valid antenuptial agreement constitutes a **waiver** of the parties' right to have a court equitably distribute a marital estate. After finding that the antenuptial agreement was valid, the trial court erred by "reviewing the entire matter in order to ensure [the trial court's opinion of] substantial justice and proper equitable distribution between the parties" (Da 132) pursuant to N.J.S.A. 2A:34-23.1. Where a valid antenuptial agreement exists, it and not the statute controls the distribution of property. Marschall v. Marschall, 195 N.J.Super. 16 (Ch.Div. 1984), Karkaria v. Karkaria, 405 Pa.Super. 176, 592 A.2d 64 (App.Div. 1991).

The agreement is simple. Both parties had their own careers and their own incomes and they agreed that their separate earnings and property would remain separate unless a specific written agreement was made that the property was to be considered jointly owned, or marital, property (Da 83-84). Any increase in the value of separate property, with the exception of Defendant's Individual Retirement Accounts (IRAs), would be considered marital property (Da 83).

Therefore, the only assets subject to distribution in this matter were the marital residence and its furnishings, which were held as tenants by the entirety, the parties' automobiles, and their income tax refunds. The agreement further states that in the event of divorce, each party was to first receive their separate property, then any contribution to joint property made from separate property, and finally any marital property (as defined by the agreement) would be divided on a 50/50 basis (Da 87).

In spite of the agreement and the trial court's finding that the agreement was valid, the court went on to divide the parties' property pursuant to New Jersey's equitable distribution statute.

Defendant submits that this constituted reversible error when, as here, the parties are subject to an antenuptial agreement that the trial court has found valid.

Specifically, the trial Court departed from the antenuptial agreement as follows:
 Division of marital estate as per the parties' antenuptial
 agreement which the court found to be valid

Marital Asset	Division as per antenuptial agreement	Plaintiff's share	Defendant's share
Marital residence	Each party first receives their contribution made from separate property (Da 87)		28,621
Marital residence	Each party receives 50% of equity (Da 87)	17,689	17,689
Household contents	Each party receives 50% of the value of the household contents (valued at 7,500 - (Da 133)	3,750	3,750
Equity in Parties' automobiles acquired during marriage: a Toyota Camary (\$4,650) and a Ford Explorer (\$4,229), for a total value of \$8,879 (Da 128).	Each party receives 50% of the equity (Da 87)	6,189.50	6,189.50
Increase in plaintiff's Individual Retirement Accounts. Increase from \$32,288.71 at time of marriage (Da 98) to \$56,260 (Da 48) equals \$23,971.29	Each party receives 50% of the equity (Da 87)	11,985.65	11,985.65
Tax return refunds - Combined total of \$12,637.39.	Each party receives 50% of the equity (Da 87)	6,318.70	6,318.70
Net credits to parties:		45,932.85	74,553.85

Additionally, the court found that plaintiff was entitled to \$5,000 in punitive and \$6,750 in compensatory damages for a net credit, pursuant to the antenuptial agreement and the trial court's original findings on the domestic violence issues, of **plaintiff: \$57,682.85** and **defendant:**

\$74,553.85.

Judge Tomasello's "equitable distribution" (Da 133-138)

Marital Asset	Plaintiff's share	Defendant's share
Marital residence - separate contribution	Marital residence	\$28,621
Marital residence equity	\$17,689 (in addition to possession of the residence)	\$17,689
Paydown on mortgage from date of purchase through date of DV complaint	\$2,750	
Paydown on mortgage from date of DV complaint through date of Judgement of Divorce	\$4,000	
"What the Defendant should have contributed toward the parties' household expenses during the marriage"	\$7,500	
Interest on above	\$3,000	
Charge card debt		\$5,000
50% of increase in value of Plaintiff's IRA - calculated from date of marriage through date of DV complaint	\$7,405	\$7,405
Pre-nuptial debt.	\$2,559	
Difference in NADA trade-in values of parties' automobiles		\$210.50
Compensatory damages	\$24,000	
Punitive damages	\$15,000	
TOTAL	\$83,903	\$58,925.50

II. THE TRIAL COURT ERRED BY FAILING TO VALUE THE MARITAL ASSETS AS OF THE DATE OF DIVORCE PURSUANT TO PENNSYLVANIA LAW AND THE EXPLICIT TERMS OF THE PARTIES' ANTENUPTIAL AGREEMENT

The trial court erred first and foremost by equitably distributing the parties' assets instead of enforcing the valid antenuptial agreement. The court's error was compounded by its inconsistent use of dates for the valuation of various marital assets.

Whether applying the agreement or equitably dividing the property, the parties' choice of law provision dictates that Pennsylvania law was to control the division of the parties' assets (Da 92). Where a contract expresses a clear intent to have a particular jurisdiction's law govern, the parties' choice of law must be applied unless enforcement would rise to the level of a violation of public policy. Haynoski v. Haynoski, 264 N.J.Super. 408 (App.Div. 1993), *citing* Kalman Floor Co. Inc. v. Jos. L. Muscarelle, Inc., 196 N.J.Super. 16, 21, (App.Div. 1984), *aff'd*, 98 N.J. 266 (1985). This rule has been found to apply to antenuptial agreements just as it does to any other contract. DeLorean v. DeLorean, 211 N.J.Super. 432 (Ch.Div. 1986). In the case at bar, the parties stipulated that Pennsylvania law controlled, yet the trial court applied New Jersey law when determining the amount of equity in the marital residence that was subject to distribution. Generally, in the absence of an enforceable antenuptial agreement, a marital estate consists of the change in the combined wealth of the parties between the date of their marriage and the date set for equitable distribution. In New Jersey, the cutoff date upon which the change in the marital estate is based is determined by finding the date upon which there is "uncontrovertible evidence that the marital enterprise is no longer viable." New Jersey courts will consider a separation agreement or *pendente lite* Order, as well as a physical separation of the parties with a substantial division of assets as the date for equitable distribution. At the latest, New Jersey uses the date of the filing of a complaint for divorce as the date for determining what property was "acquired during the marriage" and is therefore subject to equitable distribution. Brandenburg v.

Brandenburg, 83 N.J. 198 (1980), Rothman v. Rothman, 65 N.J. 219 (1974). In the case *sub judice*, the trial court used the date of the filing of the domestic violence complaint as the date for the valuation of the marital estate.

The date for the valuation of the marital residence should have followed the general Pennsylvania rule that assets are to be valued as of the date of distribution, not the New Jersey rule discussed in Brandenburg. See, e.g. Wellner v. Wellner, 699 A.2d 1278 (App.Div. 1997) (proper time for valuing marital property is proximate to date of distribution, not separation), Oaks v. Cooper, 536 Pa. 134 (App.Div. 1994).

More importantly, the parties' agreement sets a specific time for the valuation of marital assets. The agreement controls the division of marital property "in the event they were to be **divorced**" (Da 87). The trial court erred by ignoring both the controlling Pennsylvania law and the explicit terms of the agreement.

The trial court should be reversed for its failure to follow the parties' valid antenuptial agreement. On remand, the trial Court must apply Pennsylvania law in dividing the equity in all marital property that existed as of the date of the parties' divorce trial in May, 1997.

III. THE TRIAL COURT ERRED BY FAILING TO APPLY PENNSYLVANIA LAW TO THE DOMESTIC TORTS ISSUES

Plaintiff included a count in her complaint for divorce for domestic violence incidents she claimed occurred during the marriage. At trial, defendant argued that, pursuant to the antenuptial agreement, Pennsylvania law should have controlled the issue of economic damages resulting from plaintiff's tort claims (1T 4-8 to 4-12). The trial court erred by not applying the parties' choice of law claims to this count.

When a valid contract contains a choice of law provision all related claims including tort claims that are directly related to the subject matter of the contract are subject to the contract's choice of law provision. *See, e.g. Jiffy Lube International v. Jiffy Lube*, 848 F.Supp. 569 (E.D.Pa.1994) (choice of law provision applies to tort claims when fair import of the provisions embraces all aspects of the legal relationship), *Unibase Systems, Inc. v. Professional Key Punch*, No. CIV.A. 86-213, 1987 WL 41873 (D.Utah 1987), *First Commodity Traders v. Heinold Commodities*, 591 F.Supp. 812 (N.D.Ill.1984), *affirmed*, 766 F.2d 1007 (7th Cir.1985).

What sets an interspousal tort claim apart from a non-spousal claim for assault is the marital relationship. Where, as here, the parties have entered into an agreement designed to address all "any and all claims, demands, liabilities and obligations whether arising out of the marital relationship . . . or by reasons of any other matter or thing whatsoever, as well as each and every additional right, title, interest and claim he or she has or may ever have against the other" (Da 90), a tort that could not exist but for the marital relationship is within the contemplation of the agreement and should have been subject to the choice of law provision.

Although Pennsylvania allows claims for interspousal torts, it does not follow the New Jersey Supreme Court's ruling in *Tevis v. Tevis*, 155 N.J.Super. 273 (App.Div. 1978), 79 N.J. 422 (1979) (1T 4-8 to 4-12). This Court should reverse the trial court's failure to apply the controlling Pennsylvania case law pursuant to the parties' valid choice of law provision.

IV. THE TRIAL COURT ERRED BY CONSIDERING DEFENDANT'S ASSETS WHEN RE-ASSESSING COMPENSATORY DAMAGES

The trial Court rejected plaintiff's claim that she suffered from battered woman's syndrome, but did assess damages for incidents that occurred within the statute of limitations. On May 20, 1997, Judge Tomasello gave a detailed analysis of the reasoning underpinning his award of compensatory and punitive damages assessed against defendant. (5T 15-11 to 17-7). As to each incident, Judge Tomasello stated that he found no long-term psychological damage, but that there was compensable bruising. After evaluating the damages, he assessed between \$1,000 and \$2,000 per bruise as compensatory damages (5T 15-22 to 19-8).

Following the May 20 oral decision, but prior to the written Judgment of Divorce, the court wrote a letter acknowledging that it had erred by failing to credit defendant with \$28,621 that he had contributed toward the purchase of the marital home from funds which were exempt from distribution. (Da 133). The court modified its May 20th oral decision and issued defendant the \$28,621 credit.

In the same letter, the court inexplicably increased the amount defendant was required to pay for plaintiff's bruises. The original punitive damages were set at \$5,000 at the May 20th hearing (5T 15-8). In the court's letter modifying the judgement set forth on the record, the punitive damages were tripled to \$15,000, and the compensatory damages jumped from \$6,750 to \$19,500.

The only change in the status of the parties between the May 20, 1997 oral decision and the August 15, 1997 letter (Da 133) was that the court rectified its earlier failure to credit defendant with \$28,621 that he was indisputably entitled to under the antenuptial agreement. While under either New Jersey or Pennsylvania law, the court may have properly considered this credit when increasing the punitive portion of the award, the court was precluded by both states' law from considering it when awarding compensatory damages. Pennsylvania's leading case on this issue states that considering a defendant's assets when assessing compensatory damages "is improper,

irrelevant, prejudicial, and clearly beyond the legally established boundaries." Baker v. Pennsylvania National Mutual Casualty Insurance Company, 522 Pa. 80, 559 A.2d 914 (1989). *See also* Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984). New Jersey permits similar factors when considering a compensatory damage award, and also absolutely prohibits considering a defendant's assets when establishing an appropriate compensatory damages award. *See* Anderson v. Exxon Co., 89 N.J. 483 (1982); Zahorian v. Russell Fitt Real Estate Agency, 62 N.J. 399 (1973), Jackson v. Concord Co., 54 N.J. 113 (1969), Gimello v. Agency Rent-A-Car Systems, 250 N.J.Super. 338 (App.Div.1991), Shaner v. Horizon Bancorp., 116 N.J. 433 (1989).

Whichever state's law is applied, the trial court's obvious consideration of defendant's assets during its *sua sponte* re-assessment of compensatory damages constituted reversible error. The punitive damages must be restored to the original amount justified by the trial court during its May 20, 1997 oral decision.

Conclusion

For the foregoing reasons, the matter should be remanded with instructions for the trial court to apply the parties' valid antenuptial agreement and to reduce the compensatory damages to the amount justified on May 20, 1997.

Respectfully submitted,

David Perry Davis, Esq.
Attorney for Defendant