IN THE COURT OF APPEALS OF IOWA

No. 1-468 / 91-485

FILED
MAY 28 1992
CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF ERNEST HOFMANN, Deceased.

FANNIE HOFMANN,

Appellant,

vs.

ROBERT HOFMANN and **FRED HOFMANN,** Fiduciaries of the Estate of ERNEST HOFMANN, Deceased,

Appellees.

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Appeal from the Iowa District Court for Kossuth County, Joseph J. Straub, Judge.

Claimant, widow of the decedent, appeals from a district court decree upholding the validity of an antenuptial agreement and denying her claim to elect against the decedent's will. **REVERSED.**

Rick Potter, Buffalo Center, for appellant.

Eldon J. Winkel, Algona, for appellees.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

OXBERGER, C.J.

Fannie and Ernest Hofmann were married on February 26, 1974. At the time, Fannie was 68 and Ernest was 71. Both parties were previously widowed and each had children from their prior marriages.

On February 25, 1974, Ernest and Fannie went to the law office of Gordon Winkel. Ernest had previously consulted with Gordon and Eldon Winkel. At the meeting, an antenuptial agreement was written and signed by the parties.

At the time of the agreement, Fannie had assets of around $5,600, while Ernest had assets of about $110,000. The agreement provided that each party could dispose of their own property by will as if they were not married.

On June 22, 1988, Ernest died. His will was admitted to probate. Pursuant to the will, Fannie was given the right to live in the parties' residence until her death. She was also given a joint savings account which held about $11,400 at the time of Ernest's death. The remainder of the estate was devised to Ernest's children.

In November 1988, Fannie filed an election of surviving spouse to take against the will of Ernest. This claim was resisted based upon the antenuptial agreement. Following trial, the district court upheld the validity of the antenuptial agreement and denied Fannie's claim. Fannie has filed this appeal. We reverse the trial court.

SCOPE OF REVIEW: This action was heard in equity and our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Coffman v. Adkins, 338 N.W.2d 540, 542 (Iowa App. 1983).

ANTENUPTIAL AGREEMENT: Our courts have recognized a general presumption in favor of antenuptial agreements. In re Marriage of Sell, 451 N.W.2d 28, 30 (Iowa App. 1989). We will uphold antenuptial provisions if they are fair between the parties and fairly, freely, and understandingly entered into. Id. Because of the relation of trust and confidence between the parties, the law requires the full and frank disclosure of all matters bearing upon an antenuptial agreement. Id. The burden of proving that an antenuptial agreement is unconscionable is on the party claiming the invalidity of the contract unless it is unjust and unreasonable on its face. In re Estate of Ascherl, 445 N.W.2d 391, 392 (Iowa App. 1989). We determine whether an agreement is reasonable at the time the agreement is executed. Id. at 393. Antenuptial contracts are looked upon with favor by the law and are to be liberally construed to carry out the intentions of the parties. In re Marriage of Pillard, 448 N.W.2d 714 (Iowa App. 1989). The purpose of such contracts is to fix the interests of the respective parties in the property of the other. Id. at 715.

An antenuptial agreement may be set aside where there has been fraud, overreaching or deceit by one of the parties. In re Parish's Estate, 236 Iowa 822, 831, 20 N.W.2d 32, 36 (1945). Further, there is a presumption the antenuptial agreement is unfair where the provision for the wife is apparently unjust or grossly inadequate with respect to the size of the husband's estate. Christians v. Christians, 241 Iowa 1017, 1021, 44 N.W.2d 431, 433 (1950).

Although we favor antenuptial agreements, like any other contract they must be entered into voluntarily by both parties, with each understanding his or her rights. Each party must ". . . exercise the highest degree of good faith, candor and sincerity in all matters bearing on the terms and execution . . . ." of the agreement. Lutger v. Lutger, 338 S.2d 1111, 1115 (Fla. App. 1976). It goes without saying that the law requires a full and frank disclosure of all matters bearing upon an antenuptial agreement. Christians v. Christians, 241 Iowa 1017, 1021, 44 N.W.2d 431, 433 (1950).

It is better practice, when preparing and signing an antenuptial agreement, that parties be represented by separate counsel. Although the failure to have separate counsel at the time of the signing of the agreement does not, as a matter of law, render it void, it is a factor to consider when concerned with the question whether the nonrepresented person understands the effect and purpose of the antenuptial agreement.

We find Fannie did not understand the effect and purpose of the antenuptial agreement. From the onset, she was unaware of the reason for the meeting with her husband and the lawyer, except that certain papers had to be signed. At the time she signed the contract, Fannie was nearly 69 years old. She had a 7th grade education. She had never owned or operated her own business. Her primary employment had been domestic labor and processing chickens. It is revealing that this contract did not give an indication of either Fannie's or Ernest's cash assets. The agreement was explained, but Fannie was not advised to seek independent counsel. The agreement did not specifically waive Fannie's right to elect against the will of Ernest.

The trial court found that Fannie had a general understanding of the extent of Ernest's estate. It is clear that Fannie knew he had an interest in á farm and a house and furnishings. We cannot say however this general understanding equates with full disclosure. We find Fannie did not understand the nature of the antenuptial agreement she signed or receive the benefit of adequate disclosure regarding the extent of the estate. Absent this understanding, Fannie did not have sufficient knowledge to sign the agreement. We reverse the trial court and find Fannie is entitled to elect to take against the decedent's will.

The parties shall pay their own attorney's fees. Costs are taxed to the appellant.

REVERSED.

Hayden, J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent. I would affirm the trial court.

As the majority points out, Fannie and Ernest were married in February 1974. At that time Fannie was sixty-eight, and Ernest was seventy-one. Both parties were previously widowed, and each had children from his or her prior marriage.

At the time of the signing of the antenuptial agreement Fannie had assets of around $5,600 while Ernest had assets of about $110,000. The agreement did not specifically waive Fannie's right to elect against the will of Ernest. The agreement did provide, however, that each party could dispose of his or her own property by will as if they were not married.

Our courts have recognized a general presumption in favor of antenuptial agreements. In re Marriage of Sell, 451 N.W.2d 28, 30 (Iowa App. 1989). We will uphold antenuptial provisions if they are fair between the parties and fairly, freely, and understandingly entered into. Id. Because of the relation of trust and confidence between the parties, the law requires the full and frank disclosure of all matters bearing upon an antenuptial agreement. Id. The burden of proving that an antenuptial agreement is unconscionable is on the party claiming the invalidity of the contract unless it is unjust and unreasonable on its face. In re Estate of Ascherl, 445 N.W.2d 391, 392 (Iowa

App. 1989). We determine whether an agreement is reasonable at the time the agreement is executed. Id. at 393.

I.

It is clear the antenuptial agreement here is not unjust and unreasonable on its face. It states that the parties may dispose of their own property by will as if they were not married. Fannie then had the burden to show the antenuptial agreement was invalid. She has not alleged Ernest engaged in fraud, overreaching, or deceit, only that the agreement was unfair to her.

Fannie admitted she knew Ernest had an interest in a farm, he owned a house, and he had some savings. There is no evidence to show she did not know the full extent of Ernest's assets. Actual knowledge of a prospective spouse's assets alleviates the need to prove full and frank disclosure. Sell, 451 N.W.2d at 30.

I agree with the trial court that Fannie understood the agreement and signed it without hesitation. Factually it appears that she has had a copy of that agreement since the date of its signing and has raised no question as to its meaning or validity during the lifetime of Ernest.

Antenuptial contracts are looked upon with favor by the law and are to be liberally construed to carry out the intentions of the parties. In re Marriage of Pillard, 448 N.W.2d 714 (Iowa App. 1989). The purpose of such contracts

is to fix the interests of the respective parties in the property of the other. Id. at 715.

II.

As it relates to the question of counsel, I believe it is better practice when preparing[1] and signing an antenuptial agreement that the parties be represented by separate counsel. This would have avoided many of the problems that occurred here and most assuredly will avoid problems in the future. I agree with the majority that although the failure to have separate counsel at the time of the signing of the agreement does not, as a matter of law, render it void, it is a factor to take into consideration when weighing the evidence as to whether the nonrepresented person understands the effect and purpose of the antenuptial agreement. I agree with the trial court that because she did not have separate counsel the agreement should not be voided

III.

Finally, there are Fannie's claims that the antenuptial agreement did not specifically deny her the right to make a claim against the will. It is not necessary for an antenuptial agreement to expressly provide that the distributive share is relinquished; it is sufficient if such intent can be inferred from the instrument. Peet v.

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1. We also direct to the attention of the Iowa Bar the recently-enacted Uniform Premarital Agreement Act, which appears as House File 357 (1991).

Monger, 244 Iowa 247, 256, 56 N.W.2d 589, 594 (1953). By providing that the parties could dispose of their own property by will as if they were not married, the intent of the antenuptial agreement here was to deny the parties the right to make a claim against the will. Antenuptial agreements should be liberally construed to carry out the intention of the parties. Norris v. Norris, 174 N.W.2d 368, 369 (Iowa 1970).

In Matter of Estate of Ascherl, 445 N.W.2d 391 (Iowa App. 1989), we referred to Christians v. Christians, 241 Iowa 1017, 1021, 44 N.W.2d 431, 433 (1950), where our supreme court stated:

> If the antenuptial agreement is fair on its face and not procured by fraud it is as legal and enforceable as other contracts.

The burden of proving that the contract is unconscionable is on the party claiming the invalidity of the contract unless it is unjust and unreasonable on its face. I agree with the trial court that there is nothing on the face of the antenuptial agreement that is unjust or unreasonable. The agreement is plain and unambiguous. I would affirm on this issue.