IN THE COURT OF APPEALS OF IOWA

No. 4-520 / 94-21

FILED
APR 28 1995
CLERK SUPREME COURT

IN RE THE MARRIAGE OF SHARON A. BENEGAS AND ANGELO BENEGAS III

Upon the Petition of
SHARON A. BENEGAS,

Appellee,

And Concerning
ANGELO BENEGAS III,

Appellant.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Angelo Benegas III appeals certain economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Gary L. Robinson and Lorraine K. Ingels of Klinger, Robinson, McCuskey & Ford, Cedar Rapids, for appellant.

James W. Affeldt of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Angelo Benegas III and Sharon Benegas were married on June 3, 1983. It was a second marriage for each of them. Angelo's two children from his previous marriage lived with the parties.

At the time of the dissolution hearing, Angelo was thirty-nine years old. He was employed at Rockwell International in Cedar Rapids in the area of configuration management. In 1992 his annual income was $41,579.

Sharon was fifty years old at the time of the dissolution hearing. She is also employed at Rockwell, where she is a test repair operator. In 1992 Sharon's annual income was $28,000.

At Angelo's instigation, on June 1, 1983, two days before their marriage, the parties entered into an antenuptial agreement. This agreement provided, in pertinent part:

> [E]ach party having disclosed the entire amount of their property holdings to the other, it is mutually agreed and understood that neither of the above parties by reason of the contemplated marriage shall have or take any right, title or interest in or to the properties of the other, or any other replacement thereon, or after acquired property, either during their lives, or after the death of either of them.

At the time they entered into the antenuptial agreement, Sharon owned a residence in Marion. The parties, and Angelo's children, lived in this residence during the marriage. Angelo brought very few assets to the marriage because he had declared bankruptcy in 1982.

During the marriage, Sharon and Angelo placed their earnings in a joint checking account, and this money was used for their living expenses. However, before Angelo deposited his check in the joint account, he placed a certain amount in a Rockwell savings plan. For each $1 Angelo placed in the savings plan the

employer contributed $0 75. At the time of the dissolution hearing the savings plan had a value of $69,596.

The district court entered a dissolution decree on November 17, 1993. The court determined the antenuptial agreement was not enforceable because there had been no meeting of the minds as to its terms. Angelo testified he believed that in the event of a dissolution, individually acquired assets would remain the property of the individual, but the jointly acquired assets would be subject to division. Sharon testified she believed that under the antenuptial agreement anything the parties owned before the marriage belonged to that person, and anything they acquired after the marriage was joint. The court also noted that Sharon did not have the advice of independent counsel before entering into the agreement.

The court divided the parties' assets to award each of the parties the assets in his or her possession. Thus, each party was awarded title to his or her own residence, pension plan, vehicle, and household goods. The court did award Sharon one-half of Angelo's savings plan at Rockwell. Sharon was ordered to pay Angelo a cash property settlement of $1,140. In total, Sharon received assets worth $160,363, and Angelo received assets worth $141,911.

Angelo filed a motion pursuant to Iowa Rule of Civil Procedure 179(b) asking the court to enforce the antenuptial agreement. The court denied the motion. Angelo now appeals.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

Angelo asks us to enforce the antenuptial agreement. He believes that under the terms of the agreement each party is entitled to his or her own separate property, whether that property was accumulated prior to the marriage or after. He states that because the Rockwell savings plan was in his name only, Sharon should not have been awarded a portion of the savings plan.

As a general rule, antenuptial agreements are favored by the law and should be construed liberally to carry out the intention of the parties. *Norris v. Norris*, 174 N.W.2d 368, 369 (Iowa 1970). Our courts will uphold antenuptial provisions if they are fair between the parties and fairly, freely, and understandingly entered into. *In re Marriage of Sell*, 451 N.W.2d 28, 30 (Iowa App. 1989).

If an antenuptial agreement is fair on its face and not procured by fraud, it is as legal and enforceable as other contracts. *In re Estate of Ascherl*, 445 N.W.2d 391, 392 (Iowa App. 1989). Antenuptial agreements are construed in the same manner as ordinary contracts. *Christians v. Christians*, 241 Iowa 1017, 1021, 44 N.W.2d 431, 433 (1950).

There are several reasons why antenuptial agreements may be found unenforceable. A party to an antenuptial agreement may abandon such an agreement. *In re Marriage of Pillard*, 448 N.W.2d 714, 715 (Iowa App. 1989). Abandonment of a contract is the relinquishment, renunciation or surrender of a right. *In re Marriage of Van Brocklin*, 468 N.W 2d 40, 46 (Iowa App. 1991).

> Abandonment of a valid contract may be expressed by express agreement of the parties, or the parties, by conduct inconsistent with the continued existence of the original contract, may estop themselves from asserting any right thereunder.

Id. (citing *Iowa Glass Depot, Inc. v. Jindrich*, 338 N.W.2d 376, 380 (Iowa 1983)).

The law requires the full and frank disclosure of all matters bearing upon an antenuptial agreement. *Sell*, 451 N.W.2d at 30. Thus, an antenuptial

agreement may be invalid due to a party's failure to make a full disclosure of his or her assets and debts. *In re Marriage of Lundtvedt*, 484 N.W.2d 613, 615 (Iowa App. 1992) Actual knowledge of a prospective spouse's assets alleviates the need to prove full and frank disclosure. *Sell*, 451 N.W.2d at 30.

Additionally, if an antenuptial agreement has been procured by fraud, it is not enforceable. *Ascherl*, 445 N.W.2d at 392. A concealment or the practice of deceptive methods by one party, by which the other is misled, will be sufficient to warrant setting such an agreement aside. *Christians*, 241 Iowa at 1021, 44 N.W.2d at 433.

The party challenging the antenuptial agreement has the burden of establishing its invalidity. *Id.* at 433. In our de novo review, we determine Sharon has failed to show the antenuptial agreement should be set aside due to abandonment, lack of disclosure, or fraud. Our examination of the transcript shows Sharon knew about the savings plan. Sharon specifically testified it had been a family decision to open the savings plan. We conclude the antenuptial agreement is enforceable.

We believe the language of the antenuptial agreement is clear, and under the terms of the agreement, Angelo should be awarded the Rockwell savings account. In finding this asset should be set aside to Angelo as his personal property, we determine the division of marital assets should be reevaluated.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or a percentage distribution. *Id.* The determining factor is what is fair and equitable in each particular circumstance. *Id.*

In the present case, we recognize that Sharon's income is less than that of Angelo. Additionally, Sharon is older than Angelo, and will be able to accumulate fewer assets in the future. We determine that under these facts, it would be equitable to award Sharon a slightly greater share of the parties' marital assets

We modify the dissolution decree to award Angelo the Rockwell savings plan which is in his name. We determine Sharon should be awarded the entire amount of the parties' 1991 and 1992 state and federal income tax refunds. Additionally, we eliminate the provision that Sharon must pay Angelo a cash property settlement of $1,140. Instead, we order Angelo to pay Sharon a cash property settlement of $25,000. This amount may be paid in installments of $5,000 per year over the next five years, to be due on June 1 of each year. We do not impose any obligation for interest, unless the payment is untimely, in which event the past due portion will accrue interest of ten percent.

Under the decree as modified, we have awarded Sharon assets worth $152,949 and Angelo assets worth $149,325. We affirm the dissolution decree as here modified. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.

Cady, J., concurs; Sackett, P.J., concurs in part and dissents in part.

SACKETT, J. (concurring in part; dissenting in part)

I concur in part and dissent in part. I would affirm the trial court.