The Evolution of Marital Agreements in Divorce Cases

By Mark A. Snover

Most people contemplating marriage have learned, correctly or incorrectly, through personal experience, reality television shows, radio commercials, word of mouth, or otherwise of the economic impact divorce could have on them. Questions may arise, such as: Can I protect the property I bring into the marriage? Will I have a spousal support obligation if I get divorced and, if so, how much will it be and for how long? It is believed that the financial uncertainty of a divorce is a primary obstacle to marriage for many people. Discussions pertaining to significant financial matters are more beneficial before marriage. A prenuptial agreement affords those contemplating marriage the opportunity for such discussions and enables the parties to bring certainty to what will happen to their finances should a divorce occur. These same discussions can also foster a better marital relationship by determining and resolving financial issues before the marriage.

Likewise, many married couples also learn, correctly or incorrectly, about the divorce process in the same manner as single people. Some of these individuals would also like to control their financial destiny before a divorce. This article addresses the ability of single and married people to determine the outcome of their divorce cases.

In the case of *In re Benker's Estate*,[1] the Michigan Supreme Court stated, "It is now generally recognized that antenuptial agreements which relate to the parties' rights upon the death of one of the parties are favored by public policy."[2] Before 1991, however, many questioned whether prenuptial agreements were enforceable in a divorce case. There was concern that a court would find such agreements void as a matter of public policy, the rationale being they tend to facilitate or induce separation or divorce. Then along came the landmark case of *Rinvelt v Rinvelt*.[3] The *Rinvelt* Court stated that "[t]o our knowledge, no Michigan case has specifically held that antenuptial agreements are enforceable in the context of a divorce. We now hold that they are."[4] The Court went on to reason that the idea that prenuptial agreements induce divorce is anachronistic, and that providing people with the

opportunity to think through the financial aspects of their marriage beforehand could only foster strength and permanency in the relationship. In this day and age, judicial recognition of prenuptial agreements most likely "encourages rather than discourages marriage."[5] For prenuptial agreements to be valid and enforceable, the *Rinvelt* Court held that the following standards of fairness must be met:

- Was the agreement obtained through fraud, duress, mistake, or misrepresentation or nondisclosure of material fact?
- Was the agreement unconscionable when executed?
- Have the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?[6]

The next major development relating to the evolutionary process of this body of law is the holding of the Court in *Reed v Reed*.[7] At the time their prenuptial agreement was executed, the parties' combined net worth was less than $20,000. Their prenuptial agreement provided, among other things, that each party was to have complete control of his or her separate property acquired by either of them in an individual capacity, and that in the event of a divorce, the defendant would receive the marital home. The Court determined the heart of the premarital agreement was the provision that:

> [T]he parties agree to maintain their separate property as if not married:
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> Separate Property. Except as herein provided, each party shall have complete control of his or her separate property, and may enjoy and dispose of such property in the same manner as if the marriage had not taken place. The foregoing shall apply to all property now owned by either of the parties and to all property which may hereafter be acquired by either of them in an individual capacity.[8]

During the 25-year marriage, the parties' earnings were almost identical. At the time of the divorce, the defendant's separate property, accumulated by him during the marriage, constituted the lion's share of the property.

The plaintiff filed a motion seeking a partial summary disposition, asserting that the prenuptial agreement was unenforceable. The trial court agreed and declared the prenuptial agreement null and void, claiming the real reason for the ruling was that "the facts and circumstances had so changed since the agreement was executed that its enforcement would be unfair and unreasonable."[9] The Court of Appeals reversed the ruling and determined that the prenuptial agreement was enforceable. In reaching its decision, the Court relied on *Kuziemko v Kuziemko*.[10] The Court stated that although *Kuziemko* "is an unpublished opinion that lacks binding precedential effect under the rule of stare decisis…its reasoning is persuasive and instructive….The trial court properly determined that the first step in analyzing whether changed circumstances might justify refusing to enforce a prenuptial agreement is to focus on whether the changed circumstances were foreseeable when the agreement was made."[11] The *Reed* Court held that the length of the marriage, that the parties' separate assets might grow at disparate rates, and that one party's assets might grow significantly more than the other party's would not have been readily apparent at the time the prenuptial agreement was executed. Some have argued that *Reed* overturns the *Rinvelt* opinion. This writer believes the *Reed* Court gave definition to the third *Rinvelt* requirement for enforceability of prenuptial agreements by requiring a foreseeability factor. The *Kuziemko* Court also held that "[a]ntenuptial agreements are subject to the rules of construction applicable to contracts in general….Antenuptial agreements, like other written contracts, are matters of agreement by the parties, and the function of the court is to determine what the agreement is and enforce it."[12]

Fast Facts

A recent opinion has effected the standards for enforceability of prenuptial agreements.

The standard of review traditionally applied to prenuptial agreements is not applicable to postnuptial agreements.

Recent years have not only brought change to the law relating to prenuptial agreements, but also to the law relating to postnuptial agreements. In the 1877 case of *Randall v Randall*,[13] the issue before the Michigan Supreme Court related to the enforceability of a postnuptial agreement entered into while the parties were living together. The Supreme Court held "[i]t is not the policy of the law to encourage such separations, or to favor them by supporting such arrangements as are calculated to bring them about. It has accordingly been decided that articles calculated to favor a separation which has not yet taken place will not be supported…."[14]

Subsequent to the *Rinvelt* opinion, there was widespread belief that the "*Rinvelt* test" would be applicable to the enforceability of postnuptial agreements as well as prenuptial agreements. Then along came the case of *Lentz v Lentz*.[15] In *Lentz*, the parties, while separated, desired to divide their marital assets in anticipation of their imminent divorce. The Court stated:

> We hold that the standard of review traditionally applied to antenuptial agreements is not applicable to a postnuptial separation agreement wherein the parties divide their marital assets. Public policy favors upholding a property agreement negotiated by the parties when divorce or separate maintenance is clearly imminent. Such agreements undoubtedly promote judicial efficiency and best effectuate the intent and needs of the parties. Further, we will not rewrite or abrogate an unambiguous agreement negotiated and signed by consenting adults by imposing a "reasonable" or "equitable" inquiry on the enforceability of such agreements.[16]

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Lentz makes it clear that courts will not use the *Rinvelt* test in determining the enforceability of a postnuptial agreement.

Unlike *Lentz*, the parties in *Wright v Wright*[17] were not separated at the time their postnuptial agreement was executed. The defendant filed for divorce eight months after executing the agreement. The Court explained that under Michigan law, a couple maintaining a marital relationship may not enter into an enforceable contract that anticipates and encourages a future separation or divorce. The *Wright* Court made it clear that *Lentz* is fundamentally distinguishable from the case at bar. *Lentz* dealt with a couple that had separated and wanted to divide their marital assets in anticipation of their divorce. The Court in *Lentz* specifically distinguished cases involving postnuptial agreements that were not entered into by separated couples, and recognized that these cases met with much stricter legal scrutiny than postnuptial, post-separation agreements that essentially settled property issues arising in ongoing or imminent divorce litigation.

In the recent unpublished case of *Cheff v Cheff*,[18] the parties entered into a postnuptial agreement and an amendment to the postnuptial agreement. Each agreement referenced what the parties wished to occur in the event of a divorce or separation. Nine years after the amended postnuptial agreement was executed, a divorce case was filed and the plaintiff requested that the trial court enforce the postnuptial agreement. The defendant argued that the postnuptial agreement was void as against public policy. The appellate court agreed with the defendant's position. The *Cheff* Court reasoned that "[t]he parties in the present case were not separated at the time of signing the agreement. Moreover, the agreement 'contemplated…the… divorce of a married couple' in that it contained explicit provisions pertaining to alimony and property distribution in the event of divorce or separation."[19] In addition, the May 1988 agreement did not explicitly "express a desire to maintain the marital covenant."[20] As such, the agreement fell within the parameters of *Wright* and was "void as against public policy."[21] Noteworthy in this opinion is the Court's reference to the fact that the agreement did not express a desire to maintain the marital covenant. What if it had? We do not know, but one can assume that the inclusion of such a covenant will become commonplace in postnuptial agreements.

It is unlikely that we have seen the termination of the evolution of the enforceability of prenuptial and postnuptial marital agreements. The current trend, as demonstrated by the cases cited in this article, is to attempt to give meaning to the agreements of parties that do not encourage separation or divorce. ■

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ENDNOTES

1. *In re Benker's Estate*, 416 Mich 681; 331 NW2d 193 (1982).
2. *Id.* at 688.
3. *Rinvelt v Rinvelt*, 190 Mich App 372; 475 NW2d 478 (1991).
4. *Id.* at 379.
5. *Id.* at 380.
6. *Id.*
7. *Reed v Reed*, 265 Mich App 131; 693 NW2d 825 (2005).
8. *Id.* at 146.
9. *Id.* at 143.
10. *Kuziemko v Kuziemko*, unpublished opinion per curiam of the Court of Appeals, issued December 4, 2001 (Docket No. 212377).
11. *Reed*, n 7 *supra* at 143–144 (internal citations omitted).
12. *Kuziemko*, n 10 *supra* at 3.
13. *Randall v Randall*, 37 Mich 563 (1877).
14. *Id.* at 571.
15. *Lentz v Lentz*, 271 Mich App 465; 721 NW2d 861 (2006).
16. *Id.* at 477–478.
17. *Wright v Wright*, 279 Mich App 291; 761 NW2d 443 (2008).
18. *Cheff v Cheff*, unpublished opinion per curiam of the Court of Appeals, issued April 24, 2012 (Docket No. 300231).
19. *Id.* at 3 (internal citations omitted).
20. *Id.* at 3.
21. *Id.* at 3.