

FILED

AUG 18 2011

COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
By _____

Case No. 296741

Court of Appeals, Division III
of the State of Washington

Yakima County Superior Court
Eliseo Figueroa, Respondent,
v.
Hector Chavez, Personal Representative
of
The Estate of Linda C. Davila, deceased, Appellant.

Brief of Respondent

Raymond G. Alexander, WSBA# 14592
Attorney for Respondent
Hart and Winfree
910 Franklin Ave, Suite 1
PO Box 210
Sunnyside, WA 98944
(509) 837-5302

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BRIEF OF RESPONDENT

TABLE OF CONTENTS

I.	ISSUES PRESENTED	Page 4
	No. 1	
	No. 2	
II.	STATEMENT OF THE CASE	Page 4-6
IV.	ARGUMENT	Page 6-14
V.	CONCLUSION	Page 14

TABLE OF AUTHORITIES

Table of Cases

Estate of Crawford, 107 Wn.2d 493, 730 P.2d 675 (1986).

Page 6-7.

Lakewood v. Pierce County, 106 Wn. App. 63, 23 P.3d 1 (2001).

Page 13.

Marriage of Bernard, 137 Wn. App 827, 155 P.3d 171 (2007), (2009).
Page 7.

Marriage of Foran, 67 Wn. App. 242, 834 P.2d 1081 (1992).
Page 7.

Marriage of Matson, 107 Wd.2d 479, 730 P.2d668 (1986).
Page 8.

Marriage of Obaidi, 154 Wn. App. 609, 226 P. 3rd 787 (2010).
Page 11-12.

Marriage of Rideout, 150 Wn.2d 337, 77 P.3d 1174 (2003).
Page 13.

Marriage of Zier, 136 Wn. App. 40, 147 P. 3d 624 (2006).
Page 9-10.

State v. Costich, 152 Wn.2d 463, 98 P.3d 795 (2004).
Page 13.

Whitney v. Seattle-First Nat'l Bank, 90 Wn.2d 105, 579 P.2d 937 (1978)).
Page 8.

I. ISSUES PRESENTED

1. Did the Trial Court properly rule the subject Prenuptial Agreement unenforceable?
2. Did the Appellant receive notice of the presentation of final orders?

II. STATEMENT OF THE CASE

Eliseo Figueroa is the surviving spouse of the decedent herein. They lived together approximately four plus years prior to getting married on September 29, 2007. (RP Pg. 41, lines 6-13: All references to the record are in regard to the April 8, 2010 Transcript of Trial unless otherwise noted). Prior to getting married, Linda Davila was advised by her close friend Maria Nunez to make a prenuptial agreement. (RP Pg. 31, lines 3-9).

On September 28, 2007, one day prior to their marriage, the parties signed a Prenuptial Agreement. At the time of signing the Prenuptial Agreement, which occurred in front of a Notary Public, there was not one word said between the parties and Mr. Figueroa was only gestured to sign the document by Linda Davila when his turn came to sign. (RP Pg. 19, lines 7-9; Pg. 20, lines 1-5; Pg. 21, line 15 to Pg. 22, line 13). From the time

the parties walked in to sign the Prenuptial Agreement to the time they left after signing it only took approximately 5 minutes. (RP Pg. 22, lines 11-13.) The Prenuptial Agreement is in english and Mr. Figueroa cannot read english. (RP Pg. 40, lines 13-22). The first time Mr. Figueroa saw the Prenuptial Agreement was when he signed it in front of the Notary on September 28, 2007, one day before they were married. (RP Pg. 42, lines 5-9). Mr. Figueroa did not speak to an attorney about the Prenuptial Agreement at any time prior to signing it. (RP Pg. 42, lines 10-11). Nor did Mr. Figueroa know his legal rights in regard to marriage and property at the time the Prenuptial was signed. (RP Pg. 43, lines 18-20). Subsequent to their marriage, Maria Nunez, the close friend of Linda Davila, asked Linda is she had in fact made a prenuptial agreement and Linda informed her that Mr. Figueroa had signed one, but that he did not know what he had signed. (RP Pg.31, lines 11-13).

At the time Mr. Figueroa signed the Prenuptial Agreement the only property he owned was his personal belongings consisting primarily of his clothes, an apple picking bag, one pair of orchard pruners and approximately \$1,500.00 in savings. (RP Pg. 44, lines 5-10). Mr. Figueroa did own a 2002 Oldsmobile Alero for which he paid \$2,500, but this was transferred to Linda Davila before they were married in case he was deported. (RP Pg. 44, lines 11-14; Pg. 48, lines 9-25).

On the other hand, Mr. Figueroa understood his wife was purchasing the home they lived in at 349 Weatherwax in Sunnyside, WA. and owned two vehicles, a 1998 Ford Mustang and a 1988 Dodge Caravan. Other than these properties, Mr. Figueroa was not aware of what else she may have owned at the time they signed the subject Prenuptial, nor the fair market value of her home. (RP Pg.45, line 8 to pg.46, line 9).

As stated above, Linda Davila and Mr. Figueroa were married on September 29, 2007, one day after Mr. Figueroa was gestured to sign the Prenuptial. Linda Davila passed away on November 5, 2008. (RP Pg. 47, lines 19- 21).

III. ARGUMENT

1. THE TRIAL COURT PROPERLY RULED THE PARTIES' PRENUPTIAL AGREEMENT WAS UNENFORCEABLE.

a. The subject Prenuptial Agreement is unenforceable under the laws governing marital property rights.

To begin, the burden of proof is on the party seeking to enforce the Agreement. *Estate of Crawford*, 107 Wn.2d 493, 498, 730 P.2d 675 (1986). Further, "[w]here an Agreement attempts to eliminate or restrict

property rights of a member of the marital community, it must be scrupulously examined for fairness." Id. at 498. In addition, the court is to examine the facts and circumstances existing at the time the agreement was signed, not at the time the agreement is sought to be enforced. *Marriage of Bernard*, 137 Wn. App 827,834-835, 155 P.3d 171 (2007) , *aff'd*, ___ Wn. 2d ___, ___ P.3d ___ (2009).

As stated in *Marriage of Foran*, 67 Wn. App. 242,249,834 P.2d 1081 (1992):

"The validity of a Prenuptial Agreement is evaluated by means of a 2-prong analysis:

First, the court must decide whether the Agreement provides a fair and reasonable provision for the party not seeking enforcement of the Agreement. If the court makes this finding, then the analysis ends and the Agreement may be validated....

The second prong of this analysis involves two tests....

(1) Whether full disclosure has been made by [the parties] of the amount, character and value of the property involved, and (2) whether the Agreement was entered into

fully and voluntarily on independent advice and with full knowledge by [both spouses of their] rights."

Citing *In re Marriage of Matson*, 107 Wd.2d 479, 482-82, 730 P.2d668 (1986) (quoting *Whitney v. Seattle-First Nat'l Bank*, 90Wn.2d 105, 110, 579 P.2d 937 (1978)).

The 1st prong is not met if the Agreement severely restricts the creation of community property, allows one party to enrich his or her separate property at the expense of the community, makes no provision for the disadvantaged party from the advantaged party's separate property regardless of how long the marriage lasts, does not provide for reimbursement of the disadvantaged party's contributions or personal services to the advantaged party's separate property, and/or does not allow for maintenance regardless of the length of the marriage. *Marriage of Bernard*, 137 Wn. App 827,834-835, 155 P.3d 171 (2007), *aff'd*, ___ Wn. 2d ___, ___ P.3d ___ (2009).

The 2nd prong is not met if there is not a full disclosure of the amount, character, and value of the property involved, if the Agreement is drafted without the benefit of independent counsel, if the bargaining positions of the parties are grossly imbalanced, and/or if the disadvantaged party does not have full knowledge of his or her legal rights. *Id.* at 834-835.

In the present case, the 1st prong of the analysis of the validity of the subject Prenuptial Agreement is not met. The subject Prenuptial Agreement allowed Linda Davila to enrich her separate property at the expense of the marital community. Under this Agreement, Linda Davila would be free to complete a home remodeling project or add onto her home using community funds without Eliseo Figueroa being able to make any claim for reimbursement to the community. Further, the subject Prenuptial Agreement does not make any provision for Eliseo Figueroa from Linda Davila's separate property regardless of how long the marriage lasted. Nor does the subject Prenuptial Agreement provide for reimbursement of Eliseo Figueroa's contributions or personal services to Linda Davila's separate property in any respect.

In addition, the subject Agreement did not allow for maintenance to Eliseo Figueroa regardless of the length of their marriage. This is not fair nor reasonable, especially when you cannot even make such a claim after a long term marriage. Please keep in mind, the "fair and reasonable provision" for the party not seeking enforcement of the Agreement is determined at the time the agreement was executed, not when enforcement of the agreement is sought. *Marriage of Bernard*, at 834-835, citing *In re Marriage of Zier*,

136 Wn. App. 40, 47, 147 P. 3d 624 (2006) (citing *Matson*, 107 Wn. 2d 479,484,730 P. 2d 668 (1986)). Therefore, the 1st prong of the analyses is not met.

In regard to the 2nd prong, there was not a full disclosure of the amount, character and value of the properties involved. The Agreement itself does not even list the assets of the parties or indicate any values thereof. At the time this Agreement was signed, Mr. Figueroa only had his personal clothes, an apple bag, one pair of pruners and approximately \$1,500.00 in savings. Mr. Figueroa had owned a 2002 Oldsmobile Alero for which he had paid \$2,500 but this was transferred to Linda Davila in case he was deported prior to their getting married.

As far as property owned by his soon to be wife, he knew she owned the home they lived in and two vehicles. Other than that, he did not know what else she owned. Further, the subject Prenuptial Agreement was drafted without the benefit of independent counsel for Eliseo Figueroa. He did not talk to an attorney in regard to this Agreement at any time, nor was he given the opportunity to speak with an attorney when she asked him to sign the Prenuptial the very day before their wedding date.

The bargaining positions of the parties was also grossly imbalanced. Mr. Figueroa was in the country illegally and he was dependent upon the very person (Linda Davila) who requested that he sign the subject Agreement to help make him legal so that he could stay in the country. Mr. Figueroa was also in a powerless position when Ms. Davila only showed him the subject Agreement and asked him to sign it the day before their planned wedding! On top of this, Mr. Figueroa could not read the subject Agreement because it was in English since he only speaks and reads Spanish. Nor was it interpreted to him. At the time Mr. Figueroa signed the subject Agreement, he was not aware of his legal rights. The subject Agreement clearly fails the 2nd prong of the legal analysis as well.

Therefore, the subject Prenuptial Agreement is unenforceable under the laws governing marital property rights.

b. **The subject Prenuptial Agreement is unenforceable under the principles of contract law.**

To begin, we start with the basic principles of contract law. There must be a meeting of the minds on the essential terms for a contract to be valid. *Marriage of Obaidi*, 154 Wn. App. 609,616, 226 P. 3rd 787 (2010). In *Marriage of Obaidi*, the parties had signed a “mahr” which is a prenuptial

agreement based on Islamic law. The “mahr” was written in farsi which the husband did not speak, read or write. Id. at 611. The husband “did not know about the mahr until 15 minutes before he signed it.” Id. at 611. The husband did not have the opportunity to consult with an attorney. Id. at 617. The *Obaidi* Court held that because husband “could not speak, write or read Farsi, there was no meeting of the minds as to the terms of the mahr agreement.” Id. at 617.

In the present case, Mr. Figueroa did not speak, read or write english. Mr. Figueroa only saw the agreement for the first time when he was asked to sign it the day before his wedding and the signing only took approximately five minutes. Maria Nunez, a close friend of decedent, testified that she was the one who advised decedent to get a prenuptial agreement in the first place and that when she later asked Linda if she had done so, Linda stated to her that she had made one and that Mr. Figueroa did not even know what he had signed. Just like in the *Obaidi* case, there was no meeting of the minds. Under the facts of this case, it would be a travesty of justice to uphold this agreement.

c. **This court may affirm the trial court's conclusion on any ground supported in the record.**

The subject Prenuptial Agreement is unenforceable under the laws governing marital property rights as well as under the principles of contract law. This court may affirm the decision of the trial court on any ground supported in the record, even if this court's reasoning is different than that of the trial court. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004), citing *In re Marriage of Rideout*, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003); *Lakewood v. Pierce County*, 106 Wn. App. 63, 70, 23 P.3d 1 (2001).

2. **THE APPELANT RECEIVED NOTICE OF THE PRESENTATION OF FINAL ORDERS.**

Contrary to the claim of the Estate of Linda Davila, Mr. Garrison did receive notice of the presentation of the final orders in this case, he acknowledged the same in court and he showed up in court on December 30th pursuant to the notice he received. (RP 12/30/10, Pg. 37, line 17 to Pg. 38, line 2). I apologize for the mix up on the orders. We had prepared the notices for December 30th and then when the Clerk's office informed us Judge Schwab preferred December 29th the order shortening time was accidentally not corrected. Mr. Garrison admits receiving the proposed final orders on December 22, 2010 and that my office faxed him the

proposed order shortening time and the notice of presentation the morning of December 28th since he had not responded to our letter and calls. (RP 12/30/10, Pg. 37, line 16 to Pg. 38, line 2). Everyone knew that Judge Schwab was retiring December 31, 2010 and thus all orders would need to be signed before that time. (RP 12/30/10, Pg. 39, line 13-16). My assistant had also called Mr. Garrison's office and asked if his schedule was open on the 29th and was informed it was open. (RP 12/30/10, Pg. 39, line 5-13). Mr. Garrison also admits receiving later that same day the conformed copy of the order shortening time signed by Comm. Harthcock. There was no ill-will intended. Notice was given as best it could be under the circumstances and a hearing was held on December 30, 2010 with Mr. Garrison present. (RP 12/30/10, Pg. 36, line 16 to Pg. 38, line 2) Therefore, Mr. Garrison did receive notice of the presentation of the final orders. I am not aware of any prejudice to Mr. Garrison and again, I apologize for the mix-up on the order shortening time.

IV. CONCLUSION

The decision of the trial court should be sustained for all of the reasons stated above.

Dated: August 17th, 2011.

HART and WINFREE



RAYMOND G. ALEXANDER, wsba #14592
Attorney for Respondent

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, I AMS'D

~~serve copy~~ of this document to Attorney
ROGER CARLSON

to the regular office or residence thereof.

DATED this 17th day of AUG, 2011 at
Sunnyside, Washington.

AMS