[Cite as *Hoffman v. Dobbins*, 2009-Ohio-5157.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

LINDA HOFFMAN	C. A. No. 24633
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
RICHARD E. DOBBINS, Executor, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellees	CASE No. 2008 CV 76

DECISION AND JOURNAL ENTRY

Dated: September 30, 2009

CARR, Presiding Judge.

{¶1} Appellant, Linda Hoffman, appeals the judgment of the Summit County Court of Common Pleas, Probate Division, which granted summary judgment in favor of appellees, Richard Dobbins, executor of the estate of Leo G. Hoffman; Beth Ann Hoffman; Timothy Hoffman, Sr.; Susan Hrovat; and Deborah Margroff (the "Estate"). This Court affirms.

I.

{¶2} On April 21, 2000, Linda Biege, nka Hoffman, and Leo Hoffman, executed an antenuptial agreement. They were married on May 20, 2000. On September 17, 2003, Linda and Leo Hoffman purportedly executed an amendment to the antenuptial agreement, revoking any provision in the antenuptial agreement concerning the death of either or both parties. On December 22, 2007, Leo Hoffman died.

{¶3} On June 19, 2008, Linda Hoffman ("Wife") filed a complaint for declaratory judgment, demanding that the probate court declare both the April 21, 2000 antenuptial

agreement and the September 17, 2003 amendment to the antenuptial agreement valid and enforceable contracts. The Estate answered on July 17, 2008, joining Wife in her request that the antenuptial agreement be declared a valid and enforceable contract. The Estate asked the probate court, however, to declare the attempted amendment to the antenuptial agreement to be void as contrary to law and against public policy.

{¶4} On October 31, 2008, Wife filed a motion for summary judgment. On November 18, 2008, the Estate filed its opposition to Wife's motion for summary judgment and filed its own motion for summary judgment. Wife replied in opposition to the Estate's motion for summary judgment. On January 22, 2009, the probate court issued an order denying Wife's motion for summary judgment, granting the Estate's motion for summary judgment, and dismissing the case. Wife filed a timely appeal, raising two assignments of error for review. This Court consolidates the assignments of error as they are interrelated.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED BY RULING THAT THE PARTIES TO A VALID ANTENUPTIAL AGREEMENT MAY NOT, DURING THE MARRIAGE, CANCEL, RESCIND OR REVOKE A PORTION OF THE TERMS CONTAINED IN SAID AGREEMENT."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT'S RULING IS MANIFESTLY AGAINST EXISTING PUBLIC POLICY."

{¶5} Wife argues that the trial court erred by ruling that the purported amendment to the antenuptial agreement was void and unenforceable as a matter of law. This Court disagrees.

{¶6} The validity of antenuptial agreements has long been recognized in Ohio. See, e.g., *Stilley v. Folger* (1846), 14 Ohio 610. The Ohio Supreme Court has defined an antenuptial

agreement as "a contract entered into between a man and a woman in contemplation, and in consideration, of their future marriage whereby the property rights and economic interests of either the prospective wife or husband, or both, are determined and set forth in such instrument." *Gross v. Gross* (1984), 11 Ohio St.3d 99, 102. While antenuptial agreements are generally reduced to writing prior to marriage, the Ohio Supreme Court has recognized the validity of postnuptial memoranda or notes executed for the purpose of memorializing oral antenuptial agreements. *In re Estate of Weber* (1960), 170 Ohio St. 567, at syllabus.

{¶7} Postnuptial agreements, with specific limited exceptions, are not valid in Ohio. *Burgin v. Burgin* (Aug. 5, 1987), 1st Dist. No. C-860628. "A husband and wife cannot, by any contract with each other, alter their legal relations, except that they may agree to an immediate separation and make provisions for the support of either of them and their children during the separation." R.C. 3103.06.

{¶8} There is some authority for the proposition that a husband and wife may revoke or rescind an antenuptial agreement during their marriage. See, e.g., *Dalgarn v. Leonard* (1948), 87 N.E.2d 728, 731 (holding that an antenuptial agreement is presumed to have remained in effect continuously in the absence of evidence that the parties had terminated the agreement); *Simoni v. Simoni* (1995), 102 Ohio App.3d 628. While neither party disputes this authority, this Court does not reach the issue of the propriety of the revocation of an antenuptial agreement because this case merely involves the attempted amendment, or partial revocation, of an antenuptial agreement.

{¶9} Wife has cited no authority, and this Court can find none, however, which holds that a postnuptial amendment to an antenuptial agreement is valid and enforceable. An amended contract necessarily alters the legal relations of the husband and wife by either restricting or

expanding their legal rights and obligations. Accordingly, amendments to antenuptial agreements are violative of the legislative proscriptions of R.C. 3103.06.

{¶10} Wife argues that such a conclusion violates "existing public policy." She fails, however, to enunciate any public policy considerations implicated by the trial court's conclusion. She merely asserts that parties wishing to modify certain provisions of an antenuptial agreement while maintaining other provisions are now compelled to divorce, execute a new antenuptial agreement, and remarry. Such an argument defies logic. Wife's assignments of error are overruled.

III.

{¶11} Wife's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Probate Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
CONCURS

BELFANCE, J.
DISSENTS, SAYING:

{¶12} I respectfully dissent as I believe that the parties were legally entitled to agree to a partial revocation of their antenuptial agreement under R.C. 3103.05, which is not contrary to R.C.3103.06. R.C. 3103.05 provides "A husband or wife may enter into any engagement or transaction with the other, or with any other person, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other." However, the broad pronouncement in R.C. 3103.05 is tempered by R.C. 3103.06 which states that "A husband and wife cannot, by any contract with each other, alter their legal relations, except that they may agree to an immediate separation and make provisions for the support of either of them and their children during the separation." Because R.C. 3103.05 broadly permits a husband and wife to contract with each other, the critical inquiry is what is meant by the prohibition contained in R.C. 3103.06 that a husband and wife cannot by contract "alter their legal relations."

{¶13} In *Du Bois v. Coen* (1919), 100 Ohio St. 17, the Supreme Court of Ohio examined a prior version of the two statutes which contain identical wording to the current version. *Du Bois* addressed the issue of whether "a husband and wife [could], during coverture and without contemplating separation, enter into a valid legal contract whereby one releases to the other all claims in the other's property, during lifetime or after death, in consideration of money paid or

promised to be paid therefore[.]" Id. at 20. In *Du Bois* the husband and wife each released all claims to each other's property which they could have maintained under existing law because of their marital relationship. Id. In consideration of the release, husband was to pay the wife the sum of $25,000 in installments. Id. Upon the wife's death, the executor sued to collect the remaining funds due to the wife's estate. Id. at syllabus. The *Du Bois* Court was called upon to interpret the phrase "alter legal relations" and concluded that the contract the husband and wife attempted to enter into altered the parties' legal relations in violation of what is now R.C. 3103.06. Id. at 23-25. The Court defined "legal relations," as encompassing more than marital status, to include "property relations in the nature of expectancies." Id. at 24. Its analysis also focused on the policy behind the statute:

> "A contract for mutual release by husband and wife in the property of the other after decease is an alteration of their legal relations. As stated before, dower and distributive share were brought within the scope of the act controlling the relations of husband and wife. These provisions were incidental to their marital relation, and were legal in their character. *It was the undoubted policy of the Legislature, by the adoption of this section, not only to preserve the unity of the marital relation, but to preserve intact the property provisions which were made for one after the decease of the other.* If the Legislature had intended merely to limit their right of contract respecting their marital relations, it would have used the term 'marital'; but having incorporated within the act the term 'legal,' which here embraces more than 'marital,' *it would seem that the Legislature intended that there should be no alteration either of marital or property relations in the nature of expectancies, except in case of immediate separation*." (Emphasis added.) Id. at 23-24.

The Court further noted that "[t]he ingrafting of the exception permitting such contracts to be made upon immediate separation plainly evinces the legislative policy of denying to a husband and wife living together the right of absolute contract with reference to their expectancies in each other's estate. It was not intended as an authorization to traffic in property of this character, thereby disturbing domestic felicity and the peaceful conjugal relations naturally existing between husband and wife living together." Id. at 24.

{¶14} Thus, close examination of *Du Bois* reveals the Court determined that the alteration of legal relations included more than the alteration of their marital status, but should also include the alteration of those property expectancies that are a direct product of the marital relationship. See id. at 23-24. Dower and inheritance rights are clearly one such property expectancy incidental to the martial relationship. Accordingly, any attempt to enter into a contract which would deprive the husband or wife of those expectancies conferred upon them by the legislature, would in effect constitute a contract to alter their legal relations. This result is logical because were it otherwise, a husband and wife could essentially contract away all of the expectancies attendant to their marriage so as to strip away all of the rights and obligations of marriage, leaving only a hollow legal shell of marriage. This result is also in keeping with the policy of preserving the unity and harmony of the marital relationship.

{¶15} The facts of the present appeal are directly opposite to the facts of *Du Bois*. Here, the parties contracted to revoke the portion of their antenuptial agreement which barred both parties from all rights of inheritance upon the death of either party. As a result of the partial revocation, the parties would not be releasing claims they are entitled to retain by law as married persons as was the case in *Du Bois*, but instead would be reinstating their expectancies in each other's estates allowed by law by virtue of their marriage. Thus, under *Du Bois* and under R.C. 3103.05 and R.C. 3103.06, such an agreement is permissible given that it did not seek to deprive either party of any legal or property rights which they have by virtue of their marriage. If anything, their agreement sought to restore legal rights that they had contracted away in the antenuptial agreement.

{¶16} The majority suggests that R.C. 3103.06 prohibits this agreement because that section appears to prohibit any agreement that would alter the parties' legal relations. However,

R.C. 3103.05 expressly allows a husband and wife to enter into transactions with each other and arguably, any contract has the effect of altering the legal relations of a husband and wife. Thus, it is illogical that the legislature would have enacted R.C. 3103.05, only to eviscerate its provisions in R.C. 3103.06. Because the legislature enacted both statutes, the logical conclusion is that while it did wish to allow a husband and wife the right to contract with each other, the legislature enacted R.C. 3103.06 so that a husband and wife, while cohabitating as such, could not contract with each other in such a manner as would alter or eliminate the fundamental attributes of the marital relationship with the result they could remain legally married yet have none of the rights and obligations attendant to the marriage. In this case, the parties' agreement evidenced an intent to restore a fundamental attribute of the marital relationship, namely, inheritance rights, not to eliminate it.

{¶17} Given that the *Du Bois* Court concluded that the intent of the legislature in enacting the precursor of R.C. 3103.06 was "not only to preserve the unity of the marital relation, but to preserve intact the property provisions which were made [by the legislature] for one after the decease of the other[,]" I can only believe that neither the *Du Bois* Court nor the legislature would take issue with an agreement such as this, which seeks only to reinstate those provisions the legislature desired to preserve for the marital union in the first place. Id. at 23. Consequently, I would reverse.

APPEARANCES:

GERALD R. LEIPPLY, Attorney at Law, for Appellant.

DEIDRE A. HANLON, and LYNNE M. EARHART, Attorneys at Law, for Appellees.