

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

PATRICIA M. FORD,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
GARY D. FORD,	:	
	:	
Appellee	:	No. 1296 EDA 2013

Appeal from the Order entered April 1, 2013,
Court of Common Pleas, Delaware County,
Civil Division at No. 2001-011545

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE and JENKINS, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED April 7, 2014

Patricia M. Ford ("Wife") appeals from the April 1, 2013 order of court denying her petition seeking to set aside a property settlement agreement and open equitable distribution and sustaining preliminary objections filed by Gary D. Ford ("Husband"). We affirm.

The trial court summarized the facts underlying this case as follows:

On October 22 2001, [Wife] commenced a divorce action against ["Husband"]. [] Wife was independently represented by legal counsel of her selection, Michael R. Sweeney, Esquire, at the time of filing the [d]ivorce [a]ction, in the negotiation, preparation and execution of the [p]roperty [s]ettlement [a]greement ('PSA'), in the entry of the final [d]ivorce [d]ecree (May 13, 2003), and thereafter. On January 24, 2003, the parties signed a PSA. ...

On May 12, 2003, Appellant Wife and Appellee Husband were divorced from bonds of matrimony by [d]ecree of this [c]ourt. Wife, through her attorney,

caused the PSA to be incorporated in the [d]ivorce [d]ecree. The PSA was modified and ratified, in writing, by [a]ddendums four times before it was incorporated into the final [d]ivorce [d]ecree (on January 24, 2003, February 5, 2003, February 28, 2003, and March 14, 2003) and[] during all of these modifications, Mr. Sweeney continued to represent [] Wife. The PSA was ... modified and ratified, in writing, an additional two times after it was incorporated into the [d]ivorce [d]ecree (on December 22, 2003, and June 24, 2004). On or before June 24, 2004, [] Wife was paid all she was owed under the PSA.

Appellant Wife filed a Petition to Set Aside Property Settlement Agreement and Open Equitable Distribution on February 17, 2012, and an Amended Petition to Set Aside Property Settlement Agreement and Open Equitable Distribution on October 2, 2012. [Husband filed preliminary objections in response to both Wife's initial petition and her amended petition.]

This [c]ourt held a [h]earing on [Wife's petition] and the [p]reliminary [o]bjections ... on February 4, 2013. Following the [h]earing, the attorneys submitted ... proposed [f]indings of [f]act and [c]onclusions of [l]aw as well as proposed [o]rders. On March 26, 2013, this [c]ourt issued an [o]rder [d]enying ... Wife's [p]etition[.] This Court also [s]ustained [] Husband's [p]reliminary [o]bjections to [] Wife's [p]etition[.]

Trial Court Opinion, 6/20/13, at 2-3.¹

¹ We are perplexed by the trial court's procedure, in which it heard argument on the preliminary objections at the same time it held a hearing on Wife's petition. It appears that this procedure has muddied the waters, as the trial court decided Husband's preliminary objections based at least in part upon Wife's failure to meet the evidentiary burden she faced with regard to the claims in her petition, as opposed to ruling strictly on Wife's petition and the documents attached thereto. **See *Bower v. Bower***, 531 Pa. 54, 57, 611

We note as further background that in her petition, Wife sought to set aside the PSA on the grounds that it lacked full and fair disclosure of the financial positions of the parties and fraudulent misrepresentation of the marital estate. She also pled in the alternative a count seeking to enforce the PSA based upon allegations that Husband's breach of the terms thereof (specifically, Husband's failure to pay her the entire amount he agreed to pay in the PSA). Amended Petition, 10/2/12, at 2-7. Wife's claims regarding full and fair disclosure and fraudulent misrepresentation are based on the argument that although marital assets were listed in the PSA, the PSA does not contain values for these assets. **See id.** Husband filed preliminary objections to Wife's amended petition on the following grounds: Wife's failure to plead fraud with specificity; insufficient specificity; inclusion of scandalous or impertinent matter; and failure to state a claim upon which relief may be granted. Preliminary Objections to Amended Petition, 11/19/12, at 1-5.

Wife presents the following issues for our review:

Whether the [I]ower [c]ourt erred in sustaining Husband's [p]reliminary [o]bjections where the [PSA] failed to provide values for the individual assets it disclosed and, therefore, lacked full and fair disclosure of the parties' financial status?

A.2d 181, 182 (1992) ("The test on preliminary objections is whether it is clear and free from doubt from all of the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief.").

Whether the [I]ower [c]ourt erred in sustaining Husband's [p]reliminary [o]bjections where Wife stated a cause of action for recovery of funds still due her [sic] under the [PSA] with the adequacy and specificity required to overcome a preliminary objection related thereto?

Appellant's Brief at 13.

Wife presents her first argument in terms of a challenge to the trial court's ruling on Husband's preliminary objections. Appellant's Brief at 24. However, because the trial court ruled on the merits of this issue, her argument is best understood as a challenge to the trial court's disposition of her petition on the merits; specifically, its determination that Wife failed to prove that there was no full and fair disclosure of the parties' financial positions. **See id.** at 24-30.² Accordingly, we address that determination mindful that this Court reviews such orders "subject to an abuse of discretion or error of law standard of review. An abuse of discretion is not lightly found, as it requires clear and convincing evidence that the trial court

² In some instances, Wife presents argument addressing this issue in terms of a ruling on preliminary objections. **See** Appellant's Brief at 26 ("These averments, when accepted as true ... are more than sufficient to establish that the PSA is in contravention of **Simeone, Ebersole** and **Mormello**"). Yet, in making her argument pursuant to the standard for preliminary objections, Wife also relies on her testimony at the hearing on her petition. **See id.** at 28-29. We understand how the trial court's procedure may have caused the parties to conflate the issues before the trial court; however, as we noted above, the trial court ruled on the merits of this issue in making its decision that Wife failed to rebut the presumption of full and fair disclosure. **See** Trial Court Opinion, 6/20/13, at 28-29. We therefore review the trial court's ruling on the merits.

misapplied the law or failed to follow proper legal procedures.” **Paroly v. Paroly**, 876 A.2d 1061, 1063 (Pa. Super. 2005) (internal citation omitted).

The law of this Commonwealth provides that “[a]bsent fraud, misrepresentation, or duress, spouses should be bound by the terms of their agreements.” **Id.** at 1065 (citing **Simeone v. Simeone**, 525 Pa. 392, 400, 581 A.2d 162, 165 (2005)).

The **Simeone** Court reaffirmed the longstanding principle that a full and fair disclosure of the financial positions of the parties is required. Absent this disclosure, a material misrepresentation in the inducement for entering a prenuptial agreement may be asserted. Directly applicable herein is the Supreme Court's admonishment, **‘If an agreement provides that full disclosure has been made, a presumption of full disclosure arises. If a spouse attempts to rebut this presumption through an assertion of fraud or misrepresentation then this presumption can be rebutted if it is proven by clear and convincing evidence.’** [**Simeone**, 525 Pa.] at 402, 581 A.2d at 167.

Id. at 1065-66 (footnote omitted)(emphasis added).

As Wife claims, the PSA contains a list of multiple assets, including numerous trusts, but does not contain values for any of these assets. To the extent that Wife claims the omission of these values alone is sufficient to set aside the PSA, she is mistaken.³ This Court rejected this precise argument

³ For instance, Wife states, “an agreement that refers to specific items of property but fails to provide values for them does not provide ‘full and fair disclosure’ of a couple’s assets and is invalid[,]” and cites **Ebersole v. Ebersole**, 713 A.2d 103 (Pa. Super. 1998), and **Mormello v. Mormello**,

in **Paroly. See id.** at 1066 (holding “an agreement is valid even if it does not contain financial disclosure itself and can be upheld if it merely recites that such disclosure has been made.”).

The PSA contains a clause entitled “Waiver of Financial Disclosures” providing that the parties are “intimately familiar” with the “nature, value and extent of the assets, income, expectancies and liabilities of the other;” that each has been given complete access to any financial information he or she requested; and that each “waiv[es] his or her respective rights to any itemization, enumeration or further disclosure” and also waives his or her right to ever challenge or seek to have the PSA set aside based upon the absence of such itemization, enumeration or disclosure. Amended Petition, 10/2/12, at Exhibit A ¶ 29.

As stated above, the inclusion of this clause in the PSA gives rise to the presumption that full and fair disclosure has been made. **Paroly**, 876 A.2d at 1066. In an attempt to rebut that presumption and establish fraudulent misrepresentation, Wife points to her testimony that she had “little knowledge of Husband’s business dealings.” Appellant’s Brief at 28. The trial court considered Wife’s testimony but did not find it sufficient to establish fraudulent misrepresentation and rebut the presumption of full and fair disclosure. Trial Court Opinion, 6/20/13, at 10, 13. As an appellate

682 A.2d 824 (Pa. Super. 1996), in support of this claim. Appellant’s Brief at 25.

court, we cannot reweigh this evidence or disturb a trial court's credibility determinations. ***Doherty v. Doherty***, 859 A.2d 811, 812 (Pa. Super. 2004). Wife's argument is therefore unavailing.

In her second issue on appeal, Wife challenges the trial court's determination that she failed to plead her claim of breach of contract against Husband with the adequacy and specificity required by the Rules of Civil Procedure and its subsequent ruling sustaining Husband's preliminary objections related thereto. Appellant's Brief at 31.

In determining whether the trial court properly sustained preliminary objections, the appellate court must examine the averments in the complaint, together with the documents and exhibits attached thereto, in order to evaluate the sufficiency of the facts averred. The impetus of our inquiry is to determine the legal sufficiency of the complaint and whether the pleading would permit recovery if ultimately proven. This Court will reverse the trial court's decision regarding preliminary objections only where there has been an error of law or abuse of discretion.

Kirschner v. K & L Gates LLP, 46 A.3d 737, 747 (Pa. Super. 2012).

The trial court concluded that Wife did not state a claim for the recovery of funds due to her under the PSA with particularity. Trial Court Opinion, 6/20/13, at 17. For the following reasons, we find no error in that determination.

"[I]n Pennsylvania, sufficient factual averments must be pleaded in a complaint to sustain a cause of action. Pennsylvania is a fact-pleading state;

a complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but the complaint must also formulate the issues by summarizing those facts essential to support the claim." **Foster v. UPMC S. Side Hosp.**, 2 A.3d 655, 666 (Pa. Super. 2010) (citation omitted). Wife includes only the following averments in her amended petition with regard to her breach of contract claim: that she and Husband entered into the PSA; that under the terms of the PSA Husband was required to make "certain payments" to Wife; that Husband "has not fulfilled his financial obligations under the [PSA] in an amount in excess of [\$20,000]." Amended Petition, 10/2/12, at 6-7. The PSA, in turn, provides that Husband is to pay Wife \$340,000 pursuant to a schedule of payments that vary in amounts over the course of 11 months. Notably, some of the payments are contingent upon certain occurrences, such as the refinancing of the marital residence and the vacation of Wife and her brother from the marital residence within a certain timeframe. **See id.** at Exhibit A, ¶¶ 6-8. Furthermore, the amounts and timeframe for these payments were altered in each of the six addendums to the PSA that the parties executed between January 24, 2003 and June 24, 2004. **Id.** at Exhibit B.

We agree with the trial court that Husband could not discern from these vague allegations the "facts essential to support" Wife's claim that he has failed to fulfill his financial obligations pursuant to the PSA. **Foster**, 2 A.3d at 666. Wife did not identify a particular payment that was not made,

nor even an amount of money due to her. Wife has provided no averments of fact that would adequately place Husband on notice of how, precisely, she believes he has breached the terms of their PSA.

We note that “where a trial court sustains preliminary objections on their merits, it is generally an abuse of discretion to dismiss a complaint without leave to amend. There may, of course, be cases where it is clear that amendment is impossible and where to extend leave to amend would be futile.” *Hill v. Ofalt*, ___ A.3d ___, 2014 WL 464212 at *14 (Pa. Super. Feb. 5, 2014) (citing *In re Estate of Luongo*, 823 A.2d 942, 946 (Pa. Super. 2003)).

In this case, Husband raised his objection to a lack of specificity regarding payments due under the PSA in his preliminary objections to Wife’s original petition, and so Wife already had the opportunity to amend her allegations with regard to this claim when she filed her amended petition. Furthermore, at the hearing Wife had the opportunity to prove what funds she believed were still due to her. The trial court apparently concluded that Wife failed to present evidence identifying what funds she alleged were still due to her, as it concluded that “Wife has not make this [c]ourt aware, in her [p]etition **or otherwise**, of why [Husband] still owes her money.” Trial Court Opinion, 6/20/13, at 17 (emphasis added).⁴

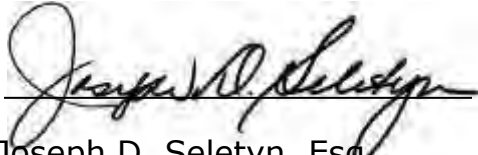
⁴ At the hearing on her petition, Wife testified only that on some unspecified date, Husband told her he was not going to pay her the last \$20,000 he

J-S12018-14

Accordingly, we conclude that the trial court did not abuse its discretion in dismissing Wife's petition without affording Wife the opportunity to amend this claim.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/7/2014

owed her under the PSA. N.T., 2/4/13, at 72. However, Wife acknowledged that on June 24, 2004, she signed an addendum to the PSA stating that Husband was making a payment of \$60,000 that would satisfy his obligations under the PSA. ***Id.*** at 73.