

IN RE: ESTATE OF Emmett Taylor BOYD.

A16A1632

March 15, 2017



The Court of Appeals, Carla McMillian, Judge, for the Court, found that after the husband, Emmett Boyd died, the Widow, Betty Boyd, petitioned probate court for a year's support. Emmett's son, Charlie, of a prior marriage, filed a caveat and objection, claiming that a post-nuptial agreement barred the Widow Betty from receiving the items she sought through her petition. The Court found that Husband Emmett's medical records, without expert testimony, and the affidavit of Betty's daughter, a nurse, about an interaction with Boyd, in which he purportedly denied wanting a divorce, were insufficient to establish the Husband's incompetency at the time he retained a divorce attorney or executed his verification of a divorce complaint. Further, there was a genuine issue of material fact as to whether Widow Betty made a knowing waiver of her right to a year's support in a post-nuptial agreement.



This case is full of family fun.

After the Superior Court of Camden County, granted summary judgment to Charlie, and denied summary judgment to Betty, and dismissed her petition, the Widow Betty appealed. In her appeal, Betty conceded that the post-nuptial agreement between she and Boyd was enforceable. However, the Widow raised three related enumerations of error, contending that enforcement of the agreement should not bar her from recovering what she seeks in her petition. Betty contended that the trial court failed to properly construe the terms of the agreement and Betty's purported waiver of a year's support.

The Court of Appeals reviewed the grant of summary judgment *de novo*, viewing the evidence and all reasonable conclusions or inferences drawn from it in the light most favorable to the nonmovant. *Dewrell Sacks, LLP v. Chicago Title Ins. Co.*, 324 Ga.App. 219, 220, 749 S.E.2d 802 (2013). The Court found that Emmett and Betty were married in Camden County, Georgia, in January 1987. Emmett and Betty had been married previously to other spouses and had children from their earlier marriages. The parties had separated after 15 years of marriage, but then reconciled and entered into a post-nuptial agreement (the "Agreement") in November 2002.



Both parties were represented by independent counsel when negotiating the post-nup Agreement. The Agreement set out how the assets would be distributed if the parties were married at the time of either party's death, and it also provides for the distribution of assets if the parties separated or filed for divorce prior to either party's death. Several lists of assets were attached to the Agreement.

In February 2015, Emmett left the marital residence in Woodbine, Georgia, and went to Florida, where Charlie lived. Betty and Charlie disputed whether Emmett intended to simply visit his son in Tallahassee or whether he intended to separate from his wife and move there. Regardless of the plan, after Emmett arrived in Tallahassee, he moved into an assisted living facility, where he briefly resided until his death.

The Court found that a Georgia divorce attorney spoke with Emmett over the phone in February, 2015. The attorney averred that Emmett had full understanding of why he wanted a divorce. On April 27, 2015, the lawyer provided Emmett with a draft of the complaint for divorce and reviewed each paragraph with him over the phone. The lawyer forwarded the draft complaint to Emmett with a verification for his signature, which was executed on April 28, 2015, in the presence of a notary public.



The lawyer mailed the verified complaint for divorce to the Superior Court of Camden County on Thursday, April 30, 2015. The next day, Emmett's health declined, and he was admitted to the hospital. On Monday, May 4, 2015 at 9:30 a.m., the Clerk of Court for the Superior Court of Camden County file stamped the divorce complaint. Just hours after filing, Emmett passed away at the age of 91 as the result of cardiopulmonary arrest and dementia. (emphasis supplied).

The Court of Appeals found that Emmett's medical records, without expert testimony, and the affidavit of Betty's daughter, a nurse, about an interaction with Emmett, in which he purportedly denied wanting a divorce, were insufficient to meet the burden of establishing husband's incompetency at the time he retained a divorce attorney or executed his verification of a divorce complaint.



The Widow Betty filed a Petition for a Year's Support in the Probate Court of Camden County. Betty listed the marital residence, the furniture located therein, and certain stocks and cash identified in the Agreement. Then, Charlie filed a caveat and objection, claiming that the Agreement barred Betty from receiving the items she sought through her Petition.

Betty and Charlie filed cross-motions for summary judgment, in which they expressly admitted the validity of the Agreement, but disputed which paragraph of the Agreement should govern the distribution of assets after Emmett's death. Widow Betty sought enforcement of Paragraph 3, by which she could inherit Emmett's one-half interest in the marital residence. Charlie, on the other hand, argued that Paragraph 7 of the Agreement controlled, providing that Betty was entitled to only one-half of the assets listed on Exhibit D upon the separation of the parties or filing for divorce by Emmett, which would prevent Betty from obtaining Emmett's one-half interest in the marital residence as a year's support.

The Superior Court granted Charlie's motion for summary judgment, denied Betty's motion for summary judgment, and dismissed Betty's Petition. The superior court specifically found that Emmett's filing for divorce triggered application of Paragraph 7 of the Agreement, which

prohibited Betty from inheriting what she sought through her Petition. The Widow Betty appealed.

The Court of Appeals found that the Widow Betty attempted to recover from Emmett's estate by claiming a year's support, which entitles a surviving spouse to support and maintenance for 12 months following the other spouse's death. OCGA § 53-3-1 (c).

The Court stated:

“A contractual agreement to waive this right to claim a year's support, however, can be valid in Georgia. See *Hiers v. Estate of Hiers*, 278 Ga.App. 242, 244-45 (1), 628 S.E.2d 653 (2006). When enforcing a post-nuptial contract, such as the Agreement here, courts are to enforce the contract as written by the parties. *Eversbusch v. Eversbusch*, 293 Ga. 60, 62 (1), 743 S.E.2d 418 (2013). In doing so, [w]e follow a three-step process in construing a contract, first determining if the contract language is clear and unambiguous. When a contract contains no ambiguity, the court simply enforces the contract according to its clear terms; the contract alone is looked to for its meaning. If, however, the contract is unclear, we attempt to resolve the ambiguity by applying the rules of contract construction. Where the contract remains ambiguous even after we apply the rules of construction, then the parties' intent must be determined by the factfinder.”

The Court of Appeals found Widow Betty's case to be “undoubtedly unique, given the narrow window of time between the filing of the divorce complaint with the Clerk and Emmett's death merely hours later”. The Court found that it was “unfortunate that the analysis as to which provision of the Agreement was triggered hinges on a few short hours of a decades-long marriage; however, we must construe the Agreement pursuant to its terms. *Freund v. Warren*, 320 Ga.App. 765, 768-69 (1), 740 S.E.2d 727 (2013).

The Court of Appeals reviewed the language in Paragraph 7 of the Agreement, which provided, in part: “In the event that either Wife or Husband moves from the residence and resides separately from the other or in the event that either of them files a divorce action against the other, then they each agree that [1] they will receive as full, final and complete settlement of any claims for alimony, support, or division of property from the other one-half of all items remaining on Exhibit “D” ...”

The trial court found that Paragraph 7 controlled because Emmett “filed” his divorce action prior to his death. The Court of Appeals agreed, finding that the Agreement's use of the word “file” is not ambiguous and has a common definition. However, the trial court also concluded, without further analysis, that Betty was thereby precluded from pursuing her petition for year's support.

The Court of Appeals found this to be error. Clause 1 refers to the settlement of claims for alimony, support, or division of property in a divorce. **However, the divorce action here was abated following Emmett's death. *Guthrie v. Guthrie*, 277 Ga. 700, 701 n.1, 594 S.E.2d 356 (2004) (unresolved claim for divorce is purely personal and abates upon death).** (emphasis supplied).

Therefore, the Court found that clause 1 did not control, and that clause 2 was a general release and could be read to include a release of all claims that Betty has against Emmett's estate for year's support pursuant to OCGA § 53-3-1.

The Court of Appeals then questioned if the Widow Betty's petition for year's support is a "further claim" that was released in clause 2 of Paragraph 7. The Georgia Supreme Court has held that "[i]n order for the relinquishment of a Widow's right to claim a year's support to be binding on her, it must be made with knowledge of her rights and of the condition of the estate." *Hubbard v. Hubbard*, 218 Ga. 617, 619 (2), 129 S.E.2d 862 (1963).

And, "[w]hether the Widow made a knowing waiver of her right to year's support based upon an adequate consideration is a question of fact." *Adams v. Adams*, 249 Ga. 477, 481 (4), 291 S.E.2d 518 (1982).



The Court found that the Widow Betty was represented by counsel when the Agreement was executed and she knew the assets of the estate by the schedules of assets attached to the Agreement. However, Charlie, the caveator, did not present evidence as to whether Betty was aware of her right to a year's support, nor was there any testimony from Betty in the record about her knowledge of her rights. "Accordingly, we vacate the judgment and remand for the trial court to consider this issue and for further proceedings consistent with this opinion."

Judgment vacated and case remanded.