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Family Law Update

Be Careful What You Wish For

When a post-nuptial agreement is found to be a complete property settlement... later reconciliation or remarriage to an ex-spouse does not nullify the agreement.

For the first time, the Pennsylvania Superior Court has decided what effect remarriage to an ex-spouse has upon the terms of a settlement agreement in Pennsylvania.

In the recent case of Wareham v. Wareham, Gregory Wareham was injured in New York and filed a personal injury lawsuit there to recover for his injuries. Wife Jody Lynn filed a divorce action in Westmoreland County, Pennsylvania sometime after the New York lawsuit was filed but before judgment was reached. As part of the divorce, the parties signed a written settlement agreement, often referred to as a "post-nuptial" agreement since it is made after the wedding, which included the provision that Gregory would split any personal injury monies he might receive with the parties' two children.

That might have been the end of this story, except that the parties later reconciled and entered into a common law marriage. The next twist occurred when Jody Lynn died, and Gregory was subsequently awarded \$222,493.00 in his personal injury lawsuit.

Gregory refused to give one-half of the proceeds to a trustee for his children, arguing that Gregory and Jody Lynn's reconciliation and common law remarriage had dissolved the post-nuptial agreement. The two children sued Gregory, and a Westmoreland County trial court ruled that Gregory had to share the money with them. Gregory appealed, bringing the issue before the Superior Court.

The Superior Court discussed the distinction between a "separation agreement", which is typically an agreement defining certain obligations such as support while parties are separated, and a post-nuptial agreement, which is typically intended to be a full settlement of all issues. When a post-nuptial agreement is found to be a complete property settlement that retains its independent contract status, then later reconciliation or remarriage to an ex-spouse does not by itself nullify the agreement. On the other hand, when a separation agreement is found not to be a full and final property settlement, it may be dissolved by reconciliation or remarriage to an ex-spouse.

In this case, the Superior Court agreed with the finding of the Westmoreland County trial court that the Wareham agreement was a full and final settlement intended to remain as an independent contract. The decision for Gregory to give \$111,246.65 plus interest to his children was upheld.

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The message from this case is clear. When a couple is in the grips of marital discord and they sign an agreement purporting to settle all of their claims, they should first carefully consider the consequences.

If this couple later reconciles or remarries, the agreement may survive despite their rekindled relationship. Be careful what you wish for — you may find yourself stuck with it.

The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.