

VICKI L. HARTMAN, Plaintiff vs. JOHN A. HARTMAN, Defendant, Franklin County Branch, CIVIL ACTION - LAW NO. F.R. 1991 - 818 IN DIVORCE A.V.M.

Hartman v. Hartman
F.R. 1991-818

1. A property settlement agreement is enforceable by using the same rules of law as used in determining the validity of contracts.
2. Parties to a marital separation agreement are free to bind themselves to the obligation of providing for the college education expenses of their children.

J. Dennis Guyer, Esq., Counsel for Defendant
William F. Kaminski, Esq., Counsel for Plaintiff

OPINION AND ORDER

Walsh, J., February 18, 1998;

OPINION

This matter came before the court on the Plaintiff's *Petition to Enforce Marital Agreement*. After hearing the testimony presented by the parties, arguments made by their respective counsel, and after examining the documents received in evidence, including the parties' Property and Separation Agreement dated July 31, 1992, the Court makes the following:

Findings of Fact:

1. The parties are the parents of three children, Jennifer, Jamie and Judson, ages 21, 18 and 16, respectively.
2. The parties were divorced on August 10, 1992.
3. The parties executed a Property and Separation Agreement ("Agreement") dated July 31, 1992.
4. Under Item 20 of the Agreement, the parties are obligated to divide equally between themselves all expenses of any of the children for education beyond the high school level ("expenses").
5. Under Item 20 of the Agreement, neither party may impose any condition upon his or her obligation to share equally such expenses.

6. The Agreement provides, in Item 25, for a broad range of remedies for its enforcement.
7. John Hartman owes Vicki Hartman \$447.50 pursuant to a stipulation entered on the record at hearing on this matter.
8. John Hartman has imposed conditions upon his share of contribution to the children's expenses under the Agreement in violation of the letter and the spirit of the Agreement.
9. Among the conditions he imposed are [1] the receipt of grades before paying tuition for the next following enrollment period and [2] refusing to pay tuition or expenses for courses required to be repeated.
10. In the past, neither Vicki Hartman, Jennifer Hartman nor Jamie Hartman can rely on timely, unconditional and adequate contributions from John Hartman for his share of expenses due under the Agreement.
11. Jennifer Hartman has dropped out of school. Contributing factors are her inability to afford to pay any portion of her expenses and her mother's inability to pay full tuition and expenses for her.
12. In the past, John Hartman has not received adequate documentation of his children's grades or of invoice or cash register amounts owed; neither has he sought to make clear to his children or Vicki Hartman the specific conditions he was imposing prior to making the payments which are his obligation under the Agreement.
13. Vicki Hartman and John Hartman do not get along.
14. Vicki Hartman enjoys an annual after-taxes take-home pay of approximately \$13,200. John Hartman enjoys an annual after-taxes take-home pay of approximately \$31,000.
15. John Hartman would prefer to deal directly with the educational institution rather than deal with Vicki Hartman when it comes to paying his share of expenses under the Agreement.
16. Vicki Hartman has incurred \$1,058.56 in attorneys fees and related costs/expenses since March 12, 1997 in attempting to enforce the Agreement.

17. With respect to Jennifer's 1995 Fall Semester, John Hartman knew his daughter's grades by January 1996 and met with Jennifer in May, 1997 at which time he received a copy of her 1995 Fall Semester grades. John Hartman ultimately made a payment to Jennifer on July 21, 1997 in an amount less than his obligation under the Agreement.

18. John Hartman improperly attempted to modify the terms of his obligation under the Agreement by having his daughter, Jennifer, sign a purported receipt ("document") on July 21, 1997.¹

19. Jennifer did not read the document before signing it.

20. John Hartman failed to make clear to Vicki Hartman or Jennifer Hartman or Jamie Hartman what specific information or documentation he required as a condition to his timely payments of his contribution toward expenses under the Agreement.

21. Vicki Hartman provided to John Hartman, upon his specific request, all documentation which he requested regarding the children's educational expenses during the relevant period.

22. Vicki Hartman exercised reasonable forbearance prior to instituting the instant proceeding to enforce the parties' Agreement.

Conclusions of Law:

1. John and Vicki Hartman have legal obligations, pursuant to the Agreement, to share equally the expenses of their children's education beyond the high school level.

2. John Hartman has breached the Agreement by failing to cooperate in its implementation and by imposing conditions upon his requirement to share equally expenses which are fairly within the ambit of the Agreement.

3. John Hartman's assertion that he has "no problem contributing to his children's education" is not credible and it is not borne out by the

¹ The document, received into evidence as Respondent's Exhibit No. 2 and bearing Jennifer Hartman's signature, reads as follows: "This is to verify that you received payment for collage [sic] expenses at HJC on July 21, 1997, covering the 1995-1996 year."

credible testimony of Vicki Hartman, Jennifer Hartman and Jamie Hartman.

4. The children's opportunities for post-high school education have been seriously compromised by the inability of Vicki Hartman and John Hartman to deal reasonably with each other.

5. The parties are in need of a detailed framework within which to work toward the goal of paying for their children's post-high school educations without hassle to each other and to their children.

6. The Court views Vicki Hartman's *Petition to Enforce Marital Agreement* as an action for breach of contract. *Goss v. Timblin*, 424 Pa.Super. 216, 622 A.2d 347 (1993).

7. Vicki Hartman is contractually entitled to an award of attorneys fees and expenses.

Discussion

Parties to a property and separation agreement have every right to contract for their respective obligations as to the post-high school education of their children. *Trunkwalter v. Trunkwalter*, 421 Pa.Super. 308, 617 A.2d 1308 (1992); and *Emrich v. Emrich*, 445 Pa. 428, 284 A.2d 682 (1971). Neither party claims that, in the procurement of the Agreement was there any undue influence, duress or coercion. The Court will not rewrite an Agreement that is clear on its face. *Goss v. Timblin*, 424 Pa.Super. 216, 622 A.2d 347 (1993).

The Agreement in this case makes it abundantly clear that both parties will share equally the expenses of their children associated with education beyond the high school level. Neither party has the right, under the Agreement or under the law, to hold his or her children's education hostage to conditions not part of the Agreement, and especially to unarticulated or un-communicated conditions. Neither John Hartman nor Vicki Hartman may negotiate with any of their children to modify the Agreement inasmuch as the Agreement is between the parties and no others. The children, as beneficiaries of the Agreement, may not waive either parent's obligations under the Agreement without the express written consent of the other party to the Agreement.

Accordingly, the Court enters the attached Order.

ORDER OF COURT

February 18, 1998, in the matter of the Plaintiff's *Petition to Enforce Marital Agreement*, the Petitioner, Vicki L. Hartman, represented by William F. Kaminski, Esq. and the Defendant, John A. Hartman, represented by J. Dennis Guyer, Esq. after hearing, the Court hereby orders as follows:

(1) John Hartman shall, within seven (7) days after the date of this Order, make payment to Vicki Hartman in the amount of Four Hundred Forty Seven (\$447.50) Dollars and Fifty Cents representing the amount stipulated to be owing to Vicki Hartman.

(2) The recipient of any tuition invoice, cash register receipt or other evidence of educational cost or indebtedness fairly within the ambit of the parties' Agreement ("invoice or receipt"), whether it be Petitioner Vicki Hartman or any of the parties' children, shall, within 48 hours after its receipt, send either the original or a legible copy of the invoice or receipt to John Hartman at his last known address and will retain proof of mailing of each such item.

(3) Within ten (10) days after his receipt of such invoice or receipt but, in any event not later than the date by which any invoiced payment is due, John Hartman shall make the required payment in full by check or money order so as not to delay the enrollment of any child and so as not to incur finance charges and so as not to cause the institution of any account collection action.

(4) Upon his receipt of any valid receipt or canceled check in payment of any expense which is fairly within the ambit of the parties' Agreement, John Hartman shall, within 48 hours, transmit directly to Vicki Hartman the original or a legible copy of such valid receipt or canceled check and shall obtain a certificate of mailing for each such transmittal. Each such transmittal shall be accompanied by a claim for contribution from Vicki Hartman ("claim") in sufficient detail to enable Vicki Hartman to understand the calculation with respect to her share of the expense.

(5) Within fourteen (14) days after receipt by Vicki Hartman of each such claim, Vicki Hartman shall promptly transmit her payment to John Hartman and shall obtain a certificate of mailing for each such transmittal.

(6) Neither party shall impose *any condition* upon the payment of expenses under the Agreement including, but not limited to, a requirement that either party shall be relieved of responsibility for paying one half of the cost of any course required to be retaken because of poor grades.

(7) Within 48 hours after any child of the parties receives college grades for any semester, that child will promptly provide legible copies of such grades to each parent. If a mailing is required in order to provide such copies, mailing shall occur within 48 hours after receipt of grades.

(8) No original or copy of any item required to be provided to another pursuant to this Order shall be transmitted without the transmitting person retaining either the original or a copy.

(9) John Hartman shall, within thirty (30) days after the date of this Order, make payment to Vicki Hartman in the amount of One Thousand Fifty Eight (\$1,058.56) Dollars and Fifty Six Cents as reimbursement for Vicki Hartman's attorneys fees and costs associated with this action.

(10) Each of the parties and their children attending college or any post high school education are hereby directed to exercise the utmost good faith and to cooperate fully with each other in the implementation of the Agreement and this Order. By way of elaboration and not by way of limitation, each of the parties may call the bursar or the billing department of any institution in which any of their children are enrolled to determine the likely amount, for budgeting purposes, of any imminent bill or invoice or to ask questions about any invoice or bill.

(11) The Court specifically directs the parties and the children to comply with the spirit of this Order.

(12) John Hartman shall pay the costs of this proceeding.