

the same to the plaintiff and defendant herein and establish the sum to be paid by the defendant for the support of his daughter, Christy Lee Clevenger, commencing March 14, 1983.

IN RE: GEYER ESTATE, C.P. Franklin County Branch, No. 54 - 1982

Orphan's Court - Antenuptial Agreement - Breach of Agreement

1. The person seeking to nullify an antenuptial agreement must overcome the presumption of validity of the agreement.
2. To nullify an antenuptial agreement, clear and convincing evidence must be shown that neither a reasonable provision was made for the spouse nor full and fair disclosure of decedent's worth.
3. The test of reasonableness is whether the agreement is sufficient to enable the widow to live comfortably after decedent's death in substantially the same way as she had previously lived.
4. Provisions made outside an antenuptial agreement are not relevant to the issue of reasonableness.
5. The highest degree of good faith on the part of both parties is required and if there is any failure of performance, the consideration for the agreement also fails.

John McD. Sharpe, Jr., Esquire, Counsel for Petitioner

Thomas J. Finucane, Esquire, Counsel for Respondent

OPINION AND ORDER

KELLER, J., March 22, 1983:

George W. Geyer died testate May 1, 1982. His Last Will and Testament dated July 13, 1981 was duly probated and letters testamentary were issued by the Register of Wills of Franklin County, Pennsylvania to George W. Geyer, III on May 7, 1982. The decedent's Last Will and Testament was recorded in Franklin County Will Book Vol. 96, Page 55. On July 2, 1982, Rosalie S.

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LEGAL NOTICES, cont.

Glenn E. Shadel
Clerk of Orphans' Court of
Franklin County, PA
2-3, 2-20, 2-17, 2-24

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF PENNSYLVANIA FRANKLIN COUNTY BRANCH

ERMA V. GLAZER and: Civil Action - Law
GERALD McCULLOH;

Executors of the Last:

Will and Testament of:

CHARLES C. GLAZER:

a/k/a C. C. GALZER,;

deceased; and MYRNA:

FILER GARNES, :

Plaintiffs :

vs. : A.D. 1984 -

: :

WILLIAM C. ANGLE, :

deceased; and H. C. :

METCALFE a/k/a :

HARRY C. METCALFE, :

deceased; and their :

unknown heirs and :

assigns, :

Defendants : Action to Quiet Title

TO: William C. Angle, deceased, H. C. Metcalfe a/k/a Harry C. Metcalfe, deceased, and their heirs, executors, administrators and assigns.

You are notified that the Plaintiffs have commenced an Action to Quiet Title against you by a Complaint filed on January 19, 1984 in the Office of the Prothonotary in Franklin County, Pennsylvania, to the above number and term.

If you wish to defend against the claims set forth in the above mentioned Complaint, you must take action within twenty (20) days after service of the Complaint and notice has been completed by publication by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claims or relief requested by the plaintiff. You may also lose money or property or other rights important to you.

LEGAL NOTICES, cont.

You should take this notice to your lawyer at once. If you do not know of a lawyer, contact:

Legal Reference Service of
Franklin-Fulton Counties
Court House
Chambersburg, PA 17201
Telephone No.: Chambersburg 264-4125,
Ext. 213

This Action concerns the land herein described: ALL THAT CERTAIN real estate located on Two Top Mountain, in Blairs Valley, Montgomery Township, Franklin County, Pennsylvania, and more particularly bounded and described as follows: BEGINNING at a point on the Mason-Dixon Line, a corner common to this parcel and Parcel No. 2 of R & H Lumber Co., and running thence with the Mason-Dixon Line due West 940.5 feet to a point at lands of C.C. Glazer Est.; thence, by same North 24 degrees 15 minutes East 5,010 feet, more or less, to a point at said Parcel No. 2 of R & H Lumber Co.; thence, running with same the following six (6) courses and distances: South 28 degrees 30 minutes East 353.1 feet to a point; thence, North 64 degrees 30 minutes East 478.5 feet East to a point; thence, South 13 degrees 30 minutes West 1724.3 feet to a point; thence, South 40 degrees 30 minutes West 2301.8 feet to a point, thence South 0 degrees 30 minutes East 597.3 feet to the place of beginning. Being the same real estate described as containing 78 acres, more or less, conveyed to C. C. Glazer and Myrna Filer Garnes in certain deeds to the Plaintiffs Erma V. Glazer and Gerald McCulloh, as Executors of the Last Will and Testament of Charles C. Glazer, a/k/a C. C. Glazer, deceased, under deed to said Charles C. Glazer from H. C. Metcalfe dated February 17, 1942, and recorded in Deed Book Volume 625, Page 129; and the Plaintiff, Myrna Filer Garnes under deed from Clarence F. Filer, dated April 7, 1947 and recorded in Deed Book Volume 689, Page 331, and as more fully set forth in a certain draft of land dated November 4, 1983 by William A. Brindle Associates.

By Stephen E. Patterson, Esq.
Patterson, Kaminski,
Keller and Kiersz
Attorneys for Plaintiffs
239 East Main Street
Waynesboro, PA 17268

2-3, 2-10, 2-17

Geyer, decedent's widow, filed her election to take against the said Will of the decedent. The election was recorded in Orphans' Court Docket Vol. 91, Page 825.

On July 15, 1982, counsel for George W. Geyer, III, executor of the Last Will and Testament of George W. Geyer, deceased, and the decedent's residuary beneficiary, presented his petition to vacate and set aside the election to take against Will. An Order of Court was signed the same day directing the issuance of a citation to the widow to show cause why her election should not be vacated, and setting August 10, 1982, at 9:30 o'clock a.m. as the date and time for hearing on the issues. The executor's petition alleged that the widow's election to take against the Will was contrary to and in violation of the terms of an antenuptial agreement between her and the decedent dated December 30, 1976. A copy of the said agreement was attached to the petition. The order and petition indicate recordation in Orphans' Court Docket Vol. 91, Page 836, et seq. The widow's answer to the petition to vacate was filed on July 30, 1982, and she denied entering into and executing the said antenuptial agreement. It does not appear that the widow's answer was recorded in the Orphans' Court Dockets. (The petition to vacate is marked Petitioner's Exhibit 16, and the Answer thereto Petitioner's Exhibit 17.) Hearings were held on August 10 and 12, 1982; October 21, 1982; and January 24, 1983. The testimony taken at all hearings other than that of January 24, 1983 was transcribed and the transcripts filed of record. Briefs were exchanged and arguments heard on February 4, 1983.

The matter is now ripe for disposition.

FINDINGS OF FACT

1. George W. Geyer, hereafter decedent, was 74 years old at the date of his death on May 1, 1982.
2. Rosalie S. Geyer, hereafter widow, was 61 years of age on May 1, 1982. She was born on February 2, 1920.
3. The decedent and widow were married on January 9, 1977. At the time of the marriage decedent was 68 years of age and the widow was 56 years of age.
4. George W. Geyer, III, hereafter executor, is the son, sole heir, residuary beneficiary of decedent, and the executor of the decedent's Last Will and Testament.
5. Decedent had been previously married twice, and both of his former wives had predeceased him.

6. The widow had two prior marriages. There were three children born to her first marriage, and those children are all married with families and in good financial condition.

7. The widow's second husband was John Werner to whom she was married for 16 years and until he died on March 16, 1976 of cancer. Mr. Werner had been a chemical engineer employed by Monsanto until 1968 when he and another individual formed a company known as Thermo System. Mr. Werner became sick in 1970, and continued as a consultant to the company until 1976.

8. Prior to Mr. Werner's illness he had been earning approximately \$35,000.00 per year which permitted him and his wife to enjoy a good life with all of the necessities, a social life, and to make investments. It was necessary to liquidate the investments to pay for his medical expenses during his illness.

9. The widow moved from Fairfield, Illinois to Chambersburg, Pa. on August 1, 1976 to be close to her sister (Lee Gruen).

10. The widow moved into a townhouse on Mountain View Drive in Greenvillage, Pennsylvania. She paid a monthly rental of \$175.00 for the townhouse.

11. When the widow arrived in Chambersburg, she had \$30,000 in certificates of deposit paying 9% interest per annum which she had purchased from life insurance proceeds on the death of her second husband, a \$5,000 second mortgage on the home she had sold in Fairfield, Illinois, a \$4,000 checking account, and the townhouse was furnished with her new furniture and some antiques. She was paid \$108.00 per week for playing the piano at Schoenberger's Restaurant, and earned \$75.00 per week teaching piano to 15 students at \$5.00 per student. She also received a United States Navy Pension in the amount of \$125.00 per month by reason of the death of her second husband. This pension was payable for her life or until her remarriage, and had the additional benefit of cost-of-living increases.

12. On August 1, 1976 when widow moved to Chambersburg, she had no knowledge of Pennsylvania law of widow's rights; no knowledge of Pennsylvania real estate values, and no meaningful business experience of any kind.

13. In mid-October 1976, widow was hospitalized for several days for alcohol abuse, and while in the Chambersburg Hospital met the decedent who was a leader and active member of the Chambersburg Chapter of Alcoholics Anonymous.

14. Widow and decedent's relationship can fairly be described as a "whirlwind romance." They saw each other daily and decedent began talking of marriage within two weeks of their meeting. Widow contemplated returning to Illinois and decedent asked her to remain in

Chambersburg until he returned from a Thanksgiving visit to California. Upon his return to Pennsylvania he persuaded her to remain and further discuss marriage.

15. During one of the marriage discussions widow stated that one of her reasons for not wanting to get married was because she had the Naval pension for life. The decedent dismissed the argument by stating that \$20,000.00 ought to take care of the pension. The widow understood that if she married the decedent, she was to receive \$20,000.00 immediately after the marriage. During the decedent's lifetime she never received the \$20,000.00.

16. The widow and the decedent had a mutual interest in music. She accompanied him on the piano while he played the cello. They also attended Alcoholics Anonymous meetings together.

17. Prior to December 30, 1976, the widow had visited decedent in his home, been shown through it, met his housekeeper and observed its furnishings. She described it as a comfortable home located on a 2-acre tract with an in-ground pool, a nice yard, a 2-car garage, and a cottage. The decedent had shown her the exterior of the Geyer Lumber and Millwork Company, and told her that that was to go to his son. At that time she was aware of the Geyer Oil Company trucks, fuel oil business and oil tanks behind decedent's home, and understood it to be part of the business which was to stay in the Geyer family. She also was aware of the fact that decedent and/or his family owned real estate where the foundation of an apartment building was being laid. Decedent had mentioned Geyer Kraft Korner to her but explained that it belonged to his previous wife, who had left it either to the corporation or to their granddaughter.

18. Prior to December 30, 1976, widow was aware of the facts that the decedent enjoyed a very comfortable life-style, dressed well, lived well, had five or six telephones and four television sets in his home, and had employees from the company do the yard and maintenance work around the home.

19. Prior to December 30, 1976, decedent has provided widow with no specific information on the value of his real estate holdings, his investments, his business, his income, or other personal affairs.

20. Prior to December 30, 1976, the widow had no knowledge from any other source of the value of the decedent's home or other properties which she was aware of him owning.

21. Prior to December 28, 1976, the decedent met with his attorney, J. Glenn Benedict, and instructed Attorney Benedict what he wanted in an ante-nuptial agreement the attorney was to prepare between the decedent and the widow. The attorney did not give the decedent any specific instructions on the execution of the agreement, and the decedent asked for no such instructions.

22. According to a notation on the attorney's file copy the decedent picked-up both original unexecuted and undated ante-nuptial agreements on December 28, 1976, and took them with him for signing. Another notation on the file copy disclosed that as of March 1977 the decedent had both existing originals, and apparently an undated notation "Margory brought them back." The widow never discussed the ante-nuptial agreement prepared by Attorney Benedict with him or any other attorney, and she received no legal advice as to the operation and effect of such an agreement.

23. On December 9, 1974, the decedent rented safe deposit box No. 119 at the Farmers and Merchants Orchard Branch Bank, and he was the sole individual with authority to enter the box. The records maintained by the Farmers and Merchants Orchard Branch Bank disclose that there was no entry in the box by the decedent between May 11, 1976 and April 4, 1977.

24. The decedent's safe deposit box No. 119 was opened on May 8, 1982 by the executor and his attorney, John McD. Sharpe, Jr. in the presence of Robert Hollar, Branch Manager of the Farmers and Merchants Trust Company, and among the contents of the box they found the Ante-Nuptial Agreement which is hereinafter set forth in its entirety and in the form it was found:

ANTE-NUPTIAL AGREEMENT

MADE this 30th day of December, in the year nineteen hundred and seventy-six (1976);

BETWEEN George W. Geyer, of the Borough of Chambersburg, Franklin County, Pennsylvania, FIRST PARTY,

AND

Rosalie Werner, of Greene Township, Franklin County, Pennsylvania. SECOND PARTY.

WHEREAS, the said parties contemplate entering into marital relations with each other and each of the parties has been previously married;

WHEREAS, the first party is possessed of real and personal property, and the ownership and operation of Geyer Lumber & Millwork Co., Inc., the fuel oil business, and Geyer's Kraft Korner, Inc."

WHEREAS, the first party has a son, George W. Geyer, III, five grandchildren, and six great grandchildren;

WHEREAS, the second party's heirs are three children and _____ grandchildren; and

AND WHEREAS, the parties hereto, both having full knowledge and understanding of the other party's financial worth and financial position, agree with the other and their existing legal rights or the existing legal rights of their children and heirs shall not be affected by the proposed marriage as herein stated:

NOW, THEREFORE, it is mutually agreed as follows:

1. That the first party shall, during the continuance of his marriage with the second party, provide a home for the second party, and shall use his income to provide reasonable support, maintenance and medical expenses for the second party, and upon the death of the first party if the second party survives him, then the first party will either devise or convey to the second party the residence property, free and clear of all encumbrances, including the household furniture and furnishings less certain items which will be designated for his child or grandchildren.
2. That upon the death of the first party, the second party surviving him and living with him at the said time as his wife, shall be awarded, given or bequeathed a sum of Twenty Thousand (\$20,000.00) Dollars to provide a substantial contribution to her way of living.
3. That the first party agrees with the second party and the second party agrees with the first party that in consideration of the two previous provisions by the first party, the second party will not make any claim to or file an election to any other portion of the first party's estate.
4. That the first party, in consideration of these agreements, understands and agrees that the second party may dispose of her estate in any way she wishes to do so, either by gift, devise or by will.
5. That it is expressly agreed that by virtue of the said marriage, neither party hereto shall have or acquire any right, title or claim in or to the real or personal estate of the other, except as herein provided, and the estate of each shall descend to and vest in his or her heirs-at-law, legatees or devisees as may be prescribed by his or her last will and testament.
6. That it is expressly agreed that if either party shall mortgage, sell or convey his or her real estate, the other party hereto shall upon request join in any and every mortgage, deed, or other instrument that may be necessary for the eventual transfer of the same.
7. That this agreement is entered into by each party with full knowledge on the part of each of the extent and probable value of all of the property, or estate, of the other, and of all the rights, that but for this agreement, would be conferred by law upon each of them in the property, or estate, of the other, by virtue of the consummation of the said proposed marriage; and it is the express

intention and desire of the parties hereto that their respective rights in and to each other's property, or estate, of whatsoever character the same may be, shall be determined and fixed by this agreement, and not otherwise.

8. That this agreement shall bind the parties hereto, their heirs, executors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

WITNESS:

_____/s/ George W. Geyer (SEAL)
George W. Geyer

FIRST PARTY

_____/s/ Rosalie Werner (SEAL)
Rosalie Werner

SECOND PARTY

25. Widow denies that she ever saw or ever signed the Ante-Nuptial Agreement.

26. Based on the testimony of James King, an expert examiner of questioned documents, and the testimony of various witnesses who heard widow refer to an agreement or a marriage agreement or holding out for a written agreement, we conclude that widow was aware of the Ante-Nuptial Agreement and had signed it.

27. There is no evidence as to the identity of the individual who dated the agreement or as to the actual date that decedent and widow signed the agreement, and we make no finding as to the date the agreement was executed other than to conclude that it occurred between December 28, 1976, and April 4, 1977, which would have been the earliest date the decedent could have placed the agreement in his safe deposit box.

28. The widow testified that on December 30, 1976, she had no intention of getting married.

29. On January 4, 1977, she agreed to marry the decedent and they secured their marriage license in Gettysburg, Adams County, Pennsylvania on that date.

30. The widow testified that prior to her marriage to decedent, she had expected to participate in decedent's life-style after she married him and she expected security.

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SHERIFF'S SALES, cont.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, March 19, 1984 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, March 23, 1984, at 1:00 P.M., E.S.T. In the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

2-17, 2-24, 3-2

BAR NEWS ITEM

Pennsylvania Bar Institute has offered a special one-hour studio produced video program entitled "Buying and Selling a Business." The tuition is \$25.00, which includes a course manual. Please contact me on or before February 23, 1984, as to whether you are interested in having this program scheduled in Franklin County.

Robert E. Graham, Jr.
Continuing Education Chairman
(717) 264-1100

31. In the calendar year 1976, the decedent was paid \$26,000.00 as the President of Geyer Lumber and Millwork Company, received \$25,320.00 as rental for the real estate and improvements thereon from the Geyer Lumber and Millwork Company. His 1976 Income Tax Return reflected an adjusted gross income of \$48,146.57, which included his earned income and rental income from the company.

32. The widow and decedent were married on January 9, 1977 at the United Church of Christ, Lincoln Way East, Chambersburg, Pennsylvania.

33. Decedent and widow filed separate income tax returns for 1977, 1978 and 1979. The 1980 Income Tax Return was the first joint return filed by them.

34. The decedent was a cured alcoholic who did not drink any alcoholic beverages. Widow testified that decedent considered her to be a social drinker and after they were married would buy her alcoholic drinks when they went out to dinner.

35. In the year preceding decedent's death, widow evidenced having a severe drinking problem and was hospitalized in the Chambersburg Hospital and then in a rehabilitation center in the late summer and early fall of 1981.

36. Widow had told decedent prior to the marriage that if she married him she wanted her own home, and decedent had told her that he would put the home in their joint names. This conveyance was never made.

37. Widow testified that during the marriage the decedent required her to purchase her own clothes, and for several years required her to pay for her own medical-hospital insurance, auto insurance and life insurance premiums. She estimated that she spent \$10,000.00 of her own money during the marriage on such items.

38. The cottage on the home property rented for \$90.00 and later for \$100.00 per month, and the decedent gave widow 75% of all of the cottage rentals for her own use. He gave her gifts, including expensive items such as a \$3,000.00 electric piano and in 1982 purchased a used 1980 Oldsmobile Cutlass for her for \$6,000.00 in cash plus a trade-in of her automobile. He paid most of her medical expenses; occasionally he paid her automobile insurance and he gave her cash for household expenses. When he commenced receiving Social Security payments of \$760.00 per month he deposited them in a joint account for their joint use. He also caused her to be picked-up on the Geyer Lumber and Millwork Company medical insurance program. He encouraged her to take courses toward her Bachelor of Arts Degree in Music at Wilson College, and paid her tuition. When widow's mother, now 82 years of age, came to Chambersburg to live decedent provided her with a rent-free apartment in an apartment complex he owned, and paid the utility bills for her.

39. As of November 1, 1975, the decedent had a lease agreement with Geyer Lumber and Millwork Company, Inc. under the terms of which the decedent leased the real estate and improvements to the corporation upon which it conducted its business affairs for an annual rental of \$26,000.00. Subsequently and during the lifetime of the decedent, the lease was renewed for a rental of \$35,000.00 per annum payable to the decedent.

40. Contrary to the testimony of the executor that he did not discuss buying out the Geyer Lumber and Millwork Company business from his father prior to the summer of 1981, he corresponded with him as early as 1977 proposing to buy out the business for the sum of \$400,000.00.

41. The decedent did on or about January 12, 1982 have a meeting with his accountant, Ronald Kearns, his sister Mary Rines, and his attorneys J. Glenn Benedict and Timothy S. Sponseller to discuss selling the business to the executor for the sum of \$400,000.00. The meeting was held at decedent's home. At the conclusion of the meeting widow entered the room and decedent briefly explained the proposed sale and explained that they or she would be protected, and would be getting \$40,000.00 per year for 10 years.

42. Decedent did provide and intended to provide adequately for widow.

43. The executor resided in the State of California during the years the widow and decedent were married.

44. The executor is son and sole heir of decedent. He had a close relationship with him and regularly communicated with him; discussing in the communications business and family matters.

45. On January 11, 1982, the executor wrote to decedent and inter alia stated:

"Whatever you want for me as your heir, I will of course accept. Your desires as you have expressed them in your will are statements of love and generosity which mean more to me than you can possibly imagine.

"The peculiar Pennsylvania law however will not permit it. I have researched that law and what it says simply stated is that:

A)-The surviving spouse can *elect* to accept the will or *take* 50% of the estate. Marriage agreements are not relevant."

46. The executor conceded having other conversations at unspecified times with the decedent about the Pennsylvania law concerning the right of a spouse to elect to take against the will. He denied advising that a spouse has the right in spite of any agreement but did advise that the right

to elect had an impact on a testator's will, and it did not matter what was in the will because the law of Pennsylvania was peculiar to the extent that it allowed a spouse to ignore the will. He also conceded the possibility that he told the decedent the Ante-Nuptial Agreement was "not worth the paper it was written on."

47. The executor told the decedent that he had discussed these aspects of Pennsylvania law with a California attorney.

48. The executor is not licensed to practice law in Pennsylvania. He has had no training or education in the law of Pennsylvania.

49. The decedent did during his lifetime employ and consult with Pennsylvania attorneys.

50. To the best of executor's knowledge the decedent never took any affirmative action on the basis of the information he conveyed to him concerning the spouse's right to elect to take against the will in the Commonwealth of Pennsylvania.

51. No evidence was introduced that the decedent relied upon the advice of the executor concerning a spouse's right to take against a deceased spouse's will.

52. Timothy S. Sponseller, Esq. succeeded to the law practice and files of Attorney J. Glenn Benedict, former counsel for the decedent.

53. Sometime prior to July 13, 1981, the decedent conferred with Timothy S. Sponseller, Esq. for the purpose of having the attorney prepare a new will for him. The will executed by the decedent on July 13, 1981, and witnessed by Attorney Sponseller and Betty H. Ile provide inter alia:

"SECOND. I give, devise and bequeath my home residence at 542 Guilford Avenue, Chambersburg, Pennsylvania, and the sum of Twenty Thousand (\$20,000.00) Dollars, to my wife, Rosalie S. Geyer, in accordance with the terms of our ante-nuptial (sic) agreement dated December 30, 1976.

"THIRD. I give, devise and bequeath all the rest, residue and remainder of my estate whatsoever and wheresoever situate, to my son, George W. Geyer, III, absolutely, if he is living at the time of my death."

54. Attorney Sponseller testified that he had seen a conformed copy of the Ante-Nuptial Agreement of December 30, 1976 in the files of Attorney Benedict. The executor had testified that Attorney Sponseller showed the conformed copy of the said Ante-Nuptial Agreement to him in January 1982. Therefore, the attorney who drafted decedent's Last Will and Testament had seen and was familiar with the Ante-Nuptial Agreement within six months of the decedent's execution of his will, and at least three months prior to his date of death.

55. Paragraph Second of the decedent's Last Will and Testament does not fully and completely carry out the terms of paragraph one of the Ante-Nuptial Agreement of December 30, 1976, in that it does not bequeath to widow "... the household furniture and furnishings. ..."

56. There is no evidence whether Attorney Sponseller brought to the decedent's attention the fact that his Last Will and Testament omitted the bequest of household furniture and furnishings provided for in the Ante-Nuptial Agreement.

57. The decedent in the presence of widow and within one or two weeks of his death asked the executor to take care of widow, and executor promised him that he would take care of her.

58. The executor explained that when he made the promise that he would take care of widow, he meant that as executor of decedent's estate he would see that everything decedent wanted her to have he would see was delivered to her, and he still intended to do that.

59. Subsequent to the death of decedent various communication problems developed between the executor and widow as a result of widow's stating in Attorney Sponseller's office during the reading of the will and the Ante-Nuptial Agreement, that she had never seen or signed the agreement and made some remark reflecting upon the sanity of decedent. The executor stated that widow is a greedy, conniving, gold-digger and seduced his father. Executor also caused an eviction notice to be served upon widow's 82-year-old mother.

60. Three or four days before decedent's death, the decedent signed a list prepared by executor and identified as "household" furnishings and other items, referred to in the signer's will, as specified items which are not included with the residence at 542 Guilford Avenue." The items included on the list are:

Sterling Silver - Twelve - 6 pc. Place Settings - Wallace -
Grand Baroque w/chest
Two Plate Silver - Vegetable Dishes w/Covers
Spode Dishes (Buttercup Pattern) - complete service for twelve
including Vegetable Dishes, Platters, Cream and Sugar, et
cetera
Steinway Grand Piano - purchased by Margaret D. Geyer
Two Cellos
Antique Sofa
Duncan Phyfe Sofa
Two antique Queen Ann Chairs - purchased by Margaret D. Geyer
Bedroom Suite - Mahogany (left to Margaret D. Geyer as part of her
inheritance from her Mother's estate)
Maple Rocker w/woven seat - from George C. Geyer Estate
Small Rocker w/woven seat - from childhood bedroom of George C.
Geyer, II

Grandfather Clock - from George C. Geyer
Doulton Figurines - Male
Copper Washboiler (George C. Geyer Estate)
All Records of George W. Geyer, III (phonograph)
All Antique Crocks and Jugs from 68 South Second Street
Antique Chest from 68 South Second Street
Oldsmobile Automobile
Geyer (George W. Geyer Family Bible)
German Bibles - Neusbaum Family
Exercycle
Pier Mirror from 68 South Second Street
George W. Geyer Books
Antique Child's Bed - above Garage

61. Paragraph 1 of the Ante-Nuptial Agreement of December 30, 1976 does refer to "certain items which will be designated for his child or grandchildren" but there is no reference in the decedent's Last Will and Testament to any such list.

62. Charles J. Schlichter, Jr., a financial planner involved with annuities, investments, and life insurance, testified that \$20,000 invested by or for a 56-year-old female in December 1976 in an annuity which provided for the systematic liquidation of the principal and income, and with no survivors benefits would provide monthly payments of \$128.89 per month to the annuitant for life.

63. On December 30, 1976, and on the date of decedent's death, the decedent owned in fee simple eleven tracts of real estate hereinafter more fully identified as items 1 through 11.

64. On December 30, 1976, the decedent owned six additional lots which he sold during his lifetime. The six lots are hereinafter more fully identified as items 12 through 17.

65. Counsel for decedent's estate caused Robert F. Crider and Ralph M. Feldman, Jr. to appraise real estate items 1 through 10 hereinafter more fully identified as of the date of decedent's death.

66. Appraisers Crider and Feldman notified counsel by letter dated August 4, 1982 of their appraisal of items 1 through 10 with a total appraisal of \$902,700.00. By letter dated September 10, 1982 the appraisers amended their appraisal by eliminating oil tanks, piping and pump house from item 3, and \$29,500.00 from their total appraisal of item 3, which reduced the total real estate appraisal to \$873,200.00.

67. The Inventory and Appraisal filed in the Office of the Clerk of the Court discloses a total appraisal of items 1 to 10 of decedent's real estate of \$812,344.00.

68. By stipulation of counsel item 11, hereinafter more fully identified, was inadvertently omitted from the Inventory and Appraise-

ment and \$55,000.00 should be added to the total real estate appraisal.

69. By stipulation of counsel item 11, referred to in Finding No. 68, was owned by the decedent on December 30, 1971.

70. Ralph M. Feldman, a qualified real estate appraiser with principal place of business in Chambersburg, Franklin County, Penna., was also retained on behalf of the estate to appraise the real estate of decedent as of December 30, 1976.

71. Mr. Feldman testified that in his opinion the total value of decedent's real estate, items 1 through 10, as of December 30, 1976 was \$392,490.00. His opinion was based upon his date of death appraisal of \$838,000.00 less \$215,000.00 representing the appraised value of decedent's apartment building which was not in existence on December 30, 1976, reduced by 63% representing the consumer price index increase from 1976 to 1982.

72. Mr. Feldman testified that he did not use comparable sales, replacement value less depreciation or capitalization as a method of determining the 1976 value of items 1 through 10 of decedent's real estate. He relied solely upon the consumer price index increase of 63%.

73. Other than Mr. Feldman's testimony as to the total appraised value of items 1 through 10 as of December 30, 1976, he limited his specific appraisal testimony as of that date to item 1 (the home) at \$43,000.00, and item 3 (Maryland Avenue) at \$28,350.00.

74. James L. Helsel, a qualified real estate appraiser with principal place of business in Harrisburg, Dauphin County, Penna., and with experience in real estate appraisals in Franklin County, was retained to appraise items 1 through 4 and item 6 as of decedent's date of death, and as of December 30, 1976.

75. Mr. Helsel testified that in reaching his opinions as to the value of the real estate, he used the market approach (comparable sales), the cost approach (replacement cost less depreciation), and considered the capitalization approach.

76. Tom W. Ausherman, a qualified real estate appraiser with principal place of business in Chambersburg, Franklin County, Penna., was retained on behalf of the widow to appraise all of the real estate of the decedent as of December 30, 1976.

77. Mr. Ausherman testified that he obtains information on all real estate sold in Franklin County, and maintains a record of all such sales according to the area in the county where the real estate is situate. He also testified that his appraisals in the case at bar were based on comparable sales and he identified the sales he considered to be of comparable properties.

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78. Mr. Ausherman was the only expert witness who testified as to the December 30, 1976 value of items 5 and 7 through 17.

79. The total appraised value of decedent's real estate as of December 30, 1976 according to Mr. Ausherman's testimony was \$841,000.00.

80. The various appraisals of the separate items of decedent's real estate are as hereinafter set forth:

	Robert F. Crider and Ralph M. Feldman	Ralph M. Feldman	James L. Helisel	Tom W. Ausherman
	5-1-82	5-1-82	5-1-82	5-1-82
1. 542 Guilford Avenue	67,500.00	67,500	74,000	60,000
2. 450 S. 3rd St.	154,000.00	130,800	106,000	200,000
3. 445-447 S. 3rd St.	82,200.00	82,200	70,500	88,000
4. Maryland Ave. Site	57,000.00	45,000	35,000	97,000
5. 218 L.W.W. Fayetteville (Geyer Kraft Korner)	104,000.00	104,000		120,000
6. 1230-1244 5th St. (On 12-30-76 cleared real estate w/founda- tion only)	215,000.00	215,000	12,000	10,500
7. E. Brandon Dr. 14.38A	155,000.00	155,000		160,000
8. E. Brandon Dr. and Stanley Avenue (Cl'd airport bldg. & land)	16,500.00	16,500		25,000
9. E. Brandon Dr. Lot #64	11,000.00	11,000		9,500
10. E. Brandon Dr. Lot #7-8	11,000.00	11,000		12,000
11. Moose Club Prop. (2.94A)		55,000		18,000
12. Lot 27				6,500
13. Lot 69				7,500
14. Lot 68				7,000
15. Lot 37A				6,000
16. Lot 26				6,500
17. Lot 63				7,500

81. The fair market value of all of the real estate owned by the decedent as of December 30, 1976 was \$699,500.00.

82. The fair market value of the decedent's home at 542 Guilford Avenue, Chambersburg, Pa. as of December 30, 1976 was \$50,000.00.

83. By stipulation of counsel the decedent on December 30, 1976 owned all of the items listed on the "Inventory of Household Goods of George W. Geyer - June 14, 1982" identified as List #1, Pages 1 through 5, attached to the Inventory and Appraisal filed in the estate, and as of December 30, 1976 each of the items had a value of not less than the amounts set forth on List #1, Pages 1 through 5.

84. The total appraised value of the inventory of household goods set forth on List #1, Pages 1 through 5, is \$9,743.50.

85. By stipulation of counsel the decedent owned on December 30, 1976, items 1, 2 and 3 listed on "Inventory of Household Goods Pertaining to the Estate of George W. Geyer, June 14, 1982," identified as List #2, Pages 1 and 2, attached to the Inventory and Appraisal filed in the estate, and as of December 30, 1976, items 1, 2 and 3 had a value of not less than the amount set forth on List #2, Pages 1 and 2.

86. The total appraised value of items 1, 2 and 3 of List #2, Pages 1 and 2, is \$1,335.00.

87. By stipulation of counsel items 4, 5, 6, 9, 22 and 24, set forth on the official Inventory and Appraisal, filed in the estate were owned by the decedent on December 30, 1976, and had a value of not less than the amount set forth for each item on the Inventory and Appraisal and the total appraised value of the said items is \$11,838.32.

88. Ronald Kearns, a certified public accountant, testified that he had examined the corporate records of Geyer Lumber and Millwork Company, Inc. and determined the value of the common stock of the corporation as of October 31, 1976 to be \$12.95 per share. He testified that the per share earnings of the common stock in 1976 was \$2.00, which would represent a per share return on investment of approximately 15%; that he had given no consideration to the fact that the decedent owned 56% of the common stock of the corporation; and that he applied a 20% discount factor on the stock value because the company was a closely held company.

89. The decedent owned 3,675 shares of the common stock of Geyer Lumber and Millwork Company, Inc. on December 30, 1976.

90. No other evidence was introduced as to the value of the said common stock and it is, therefore, determined that the total value of the said stock as of December 30, 1976 was \$47,591.25.

91. As of December 31, 1976, the decedent had a savings account in the Farmers and Merchants Trust Company with a balance of \$12,377.84.

92. The total value of the decedent's real estate, household goods, securities, coin collection and savings account as of December 30, 1976, was \$782,385.91.

93. On December 30, 1976, the decedent was obligated to the Farmers and Merchants Trust Company in the total amount of \$138,013.02 on a mortgage of \$83,013.02 and notes of \$55,000.00.

94. On December 31, 1976, the decedent was obligated to the Valley Bank and Trust Company in the amount of \$50,000.00 on a construction loan to erect the apartment building at 1230-1244 Fifth Street, Chambersburg, Pennsylvania.

95. The total obligations of the decedent as of December 30, 1976, were \$188,013.02.

96. The evidence establishes that the net worth of the decedent as of December 30, 1976, was \$594,372.89.

97. Subsequent to the decedent's death, the widow received \$5,000.00 from Aetna Life Insurance on her husband's death, the decedent's "profit-sharing check" of approximately \$10,000.00, a joint income tax refund for overpayment of 1981 taxes in the amount of \$7,700.00, and \$9,752.18 from Hartford Life Insurance Company on a life insurance policy payable on the death of the decedent.

98. Since the decedent and the widow filed a joint income tax return for 1981, she was entitled to any income tax refund payable as a matter of law, and the refund received is therefore not considered a conscious gift of the decedent to the widow.

99. Since no evidence was introduced to explain how or why the widow received the decedent's profit-sharing check, we are unable to consider those funds as received by reason of a conscious gift of the decedent.

100. The \$14,752.18 paid to the widow by insurers of decedent's life is considered to be a conscious gift of the decedent resulting from the decedent naming his wife as beneficiary on the life insurance policies.

101. At the date of decedent's death the widow's assets were \$2,000.00 in a checking account, \$2,000.00 in a savings account, one \$15,000.00 certificate of deposit, and \$80.00 in a joint checking account with decedent.

102. Other than the interest income from the certificate of deposit and the savings account, widow's sole independent source of income at

the date of decedent's death was \$50.00 a week from giving piano lessons to ten students.

103. In July 1982, widow became eligible to receive Social Security as a result of decedent's earnings, and she received in July \$664.00 and anticipates receiving a like sum each month during her life.

104. The fact that widow is receiving Social Security benefits as the result of decedent's earnings is not a significant factor, for had she remained a widow of her former husband she would have been entitled to receive Social Security benefits based on his income; and she testified that she would have been entitled to Social Security benefits based on her own earnings.

105. The significance of the inventory of the decedent's household goods separated into "List 1" and "List 2" was not made clear by testimony or stipulation. The total appraised value of List 1 was \$9,743.50. The total appraised value of List 2 was \$8,220.00; making the total inventory of household goods \$17,963.50.

106. Assuming we correctly matched the items on the list of household furnishings referred to in Finding of Fact 60, which were not to be included with the residence, the total appraised value of those items was \$7,790.00.

107. If decedent had bequeathed the household furniture and furnishings to widow as paragraph 1 of the Ante-Nuptial Agreement provides, she would have received all of the inventory of household goods appraised at \$17,963.50, less those household goods excluded appraised at \$7,790.00, or household goods with a net appraised value of \$10,173.50.

108. If the decedent had complied with the terms and conditions of the Ante-Nuptial Agreement, widow would have received:

(a) The home valued at	\$ 50,000.00
(b) Cash	20,000.00
(c) Household furniture and furnishings	10,173.50

TOTAL	\$80,173.50
-------	-------------

109. The total value of the home, cash, and net household furniture and furnishings is the equivalent of 13.49% of decedent's net estate as of December 30, 1976.

110. The value of the net household furniture and furnishings represented 12.68% of the total assets the widow was to receive under the terms of the Ante-Nuptial Agreement.

111. If the widow receives only the home and \$20,000.00, her share of the decedent's net estate is 11.77% as of December 30, 1976.

112. On December 30, 1976, a spouse taking against the will of a deceased spouse where there was but one child was entitled to receive 50% of the deceased spouse's estate.

113. As of May 1, 1982, a spouse taking against the will of a deceased spouse where there was but one child was entitled to receive 1/3 of the deceased spouse's estate.

114. The evidence is clear and convincing that on and before December 30, 1976, neither George W. Geyer nor any person on his behalf made a full and fair disclosure of his worth as of that date.

115. As of December 30, 1976, the evidence is clear and convincing that an Ante-Nuptial Agreement providing for Rosalie Werner to receive 13.4% of George W. Geyer's estate was not reasonable.

116. The failure of George W. Geyer to comply with the terms and conditions of the Ante-Nuptial Agreement by omitting to bequeath household furniture and furnishings to Rosalie Werner Geyer reduced the share of his estate his executor seeks to enforce against her under the agreement to 11.77%, and exacerbates the already unreasonable provision for the widow.

117. The widow reasonably expected security and a continuation of the lifestyle she had enjoyed during the lifetime of decedent. She testified that she will not be able to maintain the home and continue her lifestyle on the income she has and the assets she has received. We accept this as a correct statement of fact.

DISCUSSION

At issue in this case is the validity of an ante-nuptial agreement containing signatures purported to be those of George W. Geyer (decedent) and Rosalie Werner Geyer (widow). The threshold question which must first be answered is whether the widow actually signed the document setting forth the agreed legal rights of both herself and the deceased. The widow asserts that she never signed the ante-nuptial agreement and therefore should not be bound by it.

Petitioner produced evidence on this point in the form of expert testimony elicited from James King, a qualified handwriting examiner. It was his professional opinion that the signature on the ante-nuptial agreement was that of the widow based on comparisons with signature exemplars provided by Mrs. Geyer. There was also testimony from several different witnesses who heard the widow refer to a "marriage agreement" and "written agreement" between herself and the deceased. After evaluating this expert opinion and

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SHERIFF'S SALES, cont.

SEIZED IN EXECUTION as the property of Robert L. Greifzu, Jr. and Barbara D. Greifzu under Judgment No. 233, 1983 AD in Franklin County.

SALE NO. 3
Writ No. AD 1983-193 Civil 1984
Judg. No. AD 1983-193 Civil 1984
Vera B. Wenger
— vs —

George J. Walck and Sara A. Walck

his wife

Atty: Richard K. Hoskinson

ALL THAT CERTAIN following described real estate lying and being situate in Creene Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at the corner of the North line separating Lots Nos. 1 and 2 on a plan of lots surveyed and laid out by John H. Atherton for H. L. Wenger dated March 12, 1924; thence North along Chambersburg and Shippensburg Turnpike, now Route 11, 138 feet to the South corner of line separating Nos. 4 and 5, Lot No. 5 now of George N. Varner and Samuel A. Tarquino; thence West 165 feet to an alley; thence along said alley in a southerly direction for a distance of 138 feet to the corner of the line separating Lots Nos. 1 and 2; thence in an easterly direction along line separating Lots Nos. 1 and 2 for a distance of 165 feet to the place of beginning.

BEING THE GREATER PORTION of Lots Nos. 2, 3 and 4 on plan of lots previously referred to.

BEING THE SAME REAL ESTATE which Walter G. Wenger and Vera B. Wenger, his wife, by deed dated August 1, 1977, and recorded among the Deed Records of Franklin County, Pennsylvania, in Deed Book Volume 746, Page 71, conveyed to George J. Walck and Sara A. Walck, his wife.

Having erected thereon a building formerly used in a used car sales business.

BEING sold as the property of George J. Walck and Sara A. Walck, his wife, Writ No. AD 1983-193.

SALE NO. 5
Writ No. AD 1983-186 Civil 1984
Judg. No. AD 1983-186 Civil 1984
Chambersburg Trust Co.

— vs —

Colston R. Westbrook,
Diane B. Hill and Tanya E. Hill
Atty: George S. Glen

ALL THAT CERTAIN following described real estate lying and being situate on the east side of South Main Street in the Borough of Chambersburg, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at a point on the east property line of South Main Street in the Borough of Chambersburg, a corner with lands of Edward L. Bell, Jr.; thence along the east property line of said South Main Street, North 9 degrees 33 minutes 15 seconds East, 32.1 feet to a point at lands of Margaret Brandon; thence by said lands of Margaret Brandon, South 80 degrees 27 minutes East, 256 feet to a post on the west side of Central Avenue; thence by the west side of Central Avenue, South 9 degrees 27 minutes 15 seconds West, 32.1

SHERIFF'S SALES, cont.

feet to a point marked by a post at lands of Edward L. Bell, Jr.; thence by said lands of Edward L. Bell, Jr., North 80 degrees 27 minutes West, 256 feet to a point, the place of beginning, as appears from a survey and draft thereof by John H. Atherton, R.P.E., dated March 30, 1962, being known and numbered as 576 South Main Street, Chambersburg, Pennsylvania.

BEING the same real estate which Chambersburg Trust Company, Executor of the Last Will and Testament of Virginia Colston Westbrook, deceased, by deed dated September 21, 1978, and recorded in Franklin County, Pennsylvania, Deed Book Volume 775, Page 26, conveyed to Colston R. Westbrook.

IMPROVED with a 1-story brick rancher containing six rooms and bath, known as 576 South Main Street, Chambersburg, Pennsylvania.

BEING sold as the property of Colston R. Westbrook, Diane B. Hill and Tanya E. Hill, Writ No. AD 1983-186.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, March 19, 1984 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, March 23, 1984, at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

2-17, 2-24, 3-2

the supporting testimony of various credible witnesses, we find as the trier of fact that Mrs. Geyer did execute the ante-nuptial agreement. Clearly the matter of credibility of all witnesses is one within the realm of the trial court's expertise. *In re Meyers*, 410 Pa. 455, 189 A. 2d 852 (1963).

The terms of the agreement basically provided that Mr. Geyer would (1) provide a home, reasonable support, maintenance and medical care for Mrs. Geyer during their marriage; (2) devise or convey to Mrs. Geyer the residence property "including the household furniture and furnishings less certain items which will be designated for his child or grandchildren"; and (3) award, give or bequeath to Mrs. Geyer the "sum of Twenty Thousand (\$20,000.00) Dollars to provide a substantial contribution to her way of living." In consideration of these provisions for Mrs. Geyer, the agreement further provided that Mrs. Geyer would not "make any claim to or file an election to any other portion of the first party's estate."

Widow now contends that she is not bound by her promises contained in the ante-nuptial agreement since her husband breached the agreement by not providing for her as promised. She claims that he did not provide reasonable support, maintenance and medical care for her, and she was required to purchase her own clothing and pay automobile and medical insurance premiums. The estate in rebuttal produced numerous cancelled checks evidencing the payment of various doctor and clothing bills by him. Furthermore, it was shown that he had made checks out directly to her and she conceded that he gave her 75% of the rental receipts from the apartment behind their residence. Mr. Geyer also paid the tuition for his wife to attend Wilson College and obtain a degree in music. The weight of the evidence clearly supports petitioner's argument that decedent provided widow with a level of support that was more generous than promised. He cannot be deemed to have breached the agreement by failing to provide reasonable support, maintenance and medical care during their marriage.

By his will, decedent bequeathed Twenty Thousand (\$20,000.00) Dollars to widow in clear compliance with the terms of their ante-nuptial agreement. However, she contends that her husband did not leave her the furniture and furnishings as promised in the agreement and that the agreement is thereby voidable due to this breach.

In the second paragraph of the will, Mr. Geyer bequeathed his home residence to his wife but no mention whatsoever was

made of the household furniture and furnishings. Accepting the appraised value of these items as listed on the inventory for the estate, the widow was deprived of property valued at \$10,173.50 due to her husband's failure to bequeath the household furniture and furnishings to her as promised in the ante-nuptial agreement. This omission constitutes a loss of approximately one-eighth of the total value of her bargain.

The petitioner cites the case of *In re Estate of Cummings*, 493 Pa. 11, 425 A. 2d 340 (1981), as support for its position that the omission of the household furniture and furnishings in the will is an "inconsequential deviation" from the terms of the ante-nuptial agreement. In that case, the decedent had promised to establish a trust fund for his widow of not less than \$30,000.00. However, his will bequeathed her a sum outright which fell \$560 short of the stated \$30,000.00 minimum. The Pennsylvania Supreme Court held that the variation in amount was *de minimis* and required the estate to make up the difference. The deviation was viewed by the Court as not affecting the rights of the respective parties. Since there was full and fair performance of the ante-nuptial agreement, the Court refused to allow the widow to avoid the agreement terms by electing to take against the will.

In the present case, full and fair performance of the agreement has not taken place. The decedent did not merely short-change the widow; rather, he totally failed to perform one of his promises to her. This can hardly be viewed as an inconsequential deviation from the terms of the ante-nuptial agreement. Mrs. Geyer testified that she wanted security from her marriage and a home of her own. What she received was a cash bequest to take the place of her lost Navy pension and a large house with no furniture and furnishings included.

Petitioner submits that as the executor of decedent's estate he is ready and willing to honor the terms of the ante-nuptial agreement and distribute the furniture and furnishings to the widow, less the items designated by Mr. Geyer as going to his child or grandchildren. The executor's honorable offer of substituted performance need not be accepted by Mrs. Geyer. The breach was committed by decedent and any attempt by the executor to cure the insufficient performance of the ante-nuptial agreement terms does not remedy the breach. In *Harrison Estate*, 456 Pa. 356 (1974), the Court discussed the performance of ante-nuptial agreement provisions. There the Court stated that the highest degree of good faith on the part of both parties is required and if there is any failure of performance, the consideration for the agreement also

fails. Consequently, the survivor may elect to assert a claim for statutory rights and need not accept substituted performance.

Mr. Geyer's failure to bequeath the household furniture and furnishings to his wife is a breach of the ante-nuptial agreement. Such a breach cannot be viewed as "*de minimis*" or constituting an "inconsequential deviation" from the promises made in the agreement; the breach is a material one since the widow is deprived of 12.68% of the total assets she was to receive under the agreement terms. Therefore, Mrs. Geyer need not perform as she had promised in the agreement. In *Harrison*, supra, the Court noted that the very purpose of ante-nuptial agreements is to alter a spouse's statutory right of inheritance. Mrs. Geyer promised to give up her right to one-half of her husband's estate in return for the promise of her husband to provide her with a home, reasonable support, twenty thousand dollars, and household furniture and furnishings. The relinquishment of such a valuable right was assuredly conditioned on Mr. Geyer's compliance with the ante-nuptial agreement terms. Enforcement of Mrs. Geyer's release of her right to inheritance will not be decreed where the bargain on which the release is based is not performed. Petitioner's motion to vacate and set aside the widow's election to take against the will is denied.

While the breach of the ante-nuptial agreement is grounds enough to invalidate it, we also find that the widow has successfully borne the burden of proof and established facts sufficient to overcome the presumption of validity of such an agreement. The law is clear that the person seeking to nullify or void the agreement (in this case, Rosalie Geyer) has the burden of proving the invalidity of the agreement because an ante-nuptial agreement is presumptively valid and binding upon the parties thereto. In *re Hillegass' Estate*, 431 Pa. 144, 244 A. 2d 672 (1968). By clear and convincing evidence, the widow must show that her husband made neither (a) a reasonable provision for her in the ante-nuptial agreement, nor (b) a full and fair disclosure of his worth. We find that Mrs. Geyer has established the lack of both requirements thereby rendering the agreement invalid.

In determining whether a reasonable provision was made for widow in the agreement, we considered the seven factors in *Hillegass*, supra, at page 150:

"Reasonableness will depend upon the totality of all the facts and circumstances at the time of the Agreement, including (a) the financial worth of the intended husband; (b) the financial

status of the intended wife; (c) the age of the parties; (d) the number of children each has; (e) the intelligence of the parties; (f) whether the survivor aided in the accumulation of the wealth of the deceased spouse; and (g) the standard of living which the survivor had before marriage and could reasonably expect to have during marriage."

Accepting the date appearing on the agreement, December 30, 1976, as the date it was signed, we find that Mr. Geyer's net assets totalled nearly \$600,000.00 at that time and the future Mrs. Geyer had approximately \$39,000.00 of accumulated assets plus furniture. She also had the guaranteed \$125.00 per month Navy pension with the cost of living adjustment. Mr. Geyer was 68 years of age and Rosalie Werner was 56 when the agreement was signed. Both parties had been previously married twice; Rosalie had three grown children and Mr. Geyer had an adult son. The evidence produced at the hearings demonstrated that Mr. Geyer was an astute and competent businessman involved in real estate development as well as heading Geyer Lumber and Millwork Company, and the fuel oil business. While Rosalie Werner had no business experience, she was a woman of reasonable intelligence as indicated by her pursuit of academic courses. Obviously she had done nothing to aid Mr. Geyer in his accumulation of wealth since she had only been in the area and known him for five months prior to their marriage, and there was no evidence that she aided in the post-marital accumulation of decedent's wealth.

It is the last factor, listed as (g) above, that weighs most heavily in this case. The widow testified that she had enjoyed a good life with her second husband and had all of the necessities, a social life, and sound investments which were depleted when her husband became ill with cancer. She also testified that prior to her marriage, she expected to participate in his lifestyle after they were married and she also expected security. The standard of living she could reasonably expect to have during marriage was a very comfortable one. Prior to their marriage, she had visited his spacious home and met his housekeeper. They often went out to dinner together at nice restaurants, and it was not unreasonable for her to expect that Mr. Geyer's standard of living would continue after their marriage.

The provision made for widow in the ante-nuptial agreement was for her to receive a home valued at \$50,000.00, twenty thousand dollars in cash and household furniture and furnishings with an approximate value of \$10,000.00. This amounted to 13.4% of Mr. Geyer's net estate as of December 30, 1976. The twenty thousand dollars in cash took the place of the Navy

pension Rosalie lost upon her marriage to Mr. Geyer. To provide her with a lovely home with no additional funds for maintenance and upkeep of the property effectively reduced the value of such a gift to her.

The reasonableness of the provision for widow in the ante-nuptial agreement must be determined as of the agreement's date and not by hindsight. *Kaufmann's Estate*, 404 Pa. 131, 171 A. 2d 48 (1961). Furthermore, the true test of adequacy of the provision is whether it is sufficient to enable the widow to live comfortably after decedent's death in substantially the same way as she had previously lived; all circumstances must be considered. *McClellan's Estate*, 365 Pa. 401, 75 A. 2d 595 (1950). In the case at bar, the widow would in no way be able to continue her standard of living with the provision made for her in the agreement. She testified that she had less than \$20,000.00 in assets as of the date of decedent's death, she no longer has her job at Schoenberger's due to Mr. Geyer's request that she not work, and her only source of income is the \$50.00 she received each week from giving piano lessons to ten students. The decedent's provision for widow in the ante-nuptial agreement barely covers the loss of income she incurred as a result of her dropping five piano students and terminating evening employment at Schoenberger's which was done at Mr. Geyer's request.

At the time of the execution of the agreement, widow would have been entitled to receive fifty percent of decedent's estate. The very purpose of an ante-nuptial agreement is to reduce or eliminate the spouse's statutory right to claim an established portion of the deceased spouse's estate. By reducing Mrs. Geyer's percentage from fifty to 13.4, the agreement drastically altered the rights of the respective parties. Particularly considering the standard of living which she enjoyed prior to the marriage and could reasonably expect to have during her marriage, this provision is clearly unreasonable. To expect Mrs. Geyer to give up her right to one-half of Mr. Geyer's estate in return for a house which she would not be able to afford in terms of up-keep is clearly unreasonable. Parenthetically, Mr. Geyer's failure to bequeath household furniture and furnishings to his wife further reduced her 1976 share of his net worth from 13.4% to 11.7%. We find this to be highly unreasonable and untenable.

The petitioner urges us to consider the provisions made by the decedent for his widow outside the ante-nuptial agreement and outside his will. The evidence revealed that Mr. Geyer provided nearly \$15,000.00 in insurance policies on his life with

his wife named as the beneficiary. Clearly this differs from the rather recent lower court decision, *Disco Estate*, 7 D&C 3d 266 (1977). In *Disco*, the husband provided his wife with an insurance policy equaling nearly one-third the value of his net estate which gift was made outside the terms of an ante-nuptial agreement that gave nothing to the wife. No rational comparison can be made to the present situation in which decedent procured insurance policies for the benefit of his widow with a total redeemed value of less than 3% of his net estate. Furthermore, we are compelled to follow the Pennsylvania Supreme Court opinion written in *Hillegass*, supra, wherein the Court stated that provisions made outside an ante-nuptial agreement are not relevant to the issue of reasonableness. Therefore, the life insurance proceeds of nearly \$15,000.00 will be disregarded in our analysis of the reasonableness of the ante-nuptial agreement provision for widow.

The widow has also demonstrated by clear and convincing evidence that the second prong of the validity test was not met by decedent; that is, a full and fair disclosure was not made by Mr. Geyer concerning the nature, extent and value of his assets. As noted in our findings of fact, widow had seen the exterior of the Geyer Lumber and Millwork Company and was aware of the Geyer Oil Company trucks, fuel oil business and oil tanks behind decedent's home. But she knew nothing of their value and understood that all of these businesses were to go to Mr. Geyer's son and remain in the Geyer family. She also had heard of Geyer Kraft Korner and understood that it had belonged to decedent's previous wife who left it to either the corporation or their granddaughter. Widow was totally ignorant of the value of these assets and was clearly under the mistaken impression that they were already disposed of by some plan of Mr. Geyer. In fact, these assets were all relevant to Mr. Geyer's testamentary estate and their value should have been disclosed to Rosalie.

The test with respect to the requirement of disclosure of assets before entering into an ante-nuptial agreement is not whether a particular fact is important in an individual's general economic picture but whether it directly affects the size of his testamentary estate. *In re Perelman's Estate*, 438 Pa. 112, 263 A. 2d 375 (1970). Widow did not know prior to signing the agreement that these assets were even a part of her future husband's potential testamentary estate. Decedent never provided her with specific information concerning the value of his real estate holdings, investments, businesses, income or any other personal finances. Furthermore, she had no knowledge from any other source of the

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value of his assets. The evidence is overwhelming that no full and fair disclosure of Mr. Geyer's assets was made at or before the time of execution of the ante-nuptial agreement.

Counsel for Mrs. Geyer makes a novel argument that a duty should be imposed upon the estate to show that an explanation of Mr. Geyer's assets was given to Mrs. Geyer and further, that the explanation was understood. Cf. *Hionis v. Northern Mutual Insurance Company*, 230 Pa. Super. 511, 327 A. 2d 363 (1974). To expand the *Hionis* rule, which applies in the area of insurance contracts, to the field of law governing ante-nuptial agreements is a task that should not be lightly undertaken and particularly not by a trial court. We leave such an expansion of the law to the wisdom of the Legislature and our appellate courts.

Therefore, in addition to the agreement being unenforceable due to the breach by decedent of the promise contained therein to bequeath the household furniture and furnishings to Rosalie, the agreement is also unenforceable because of the lack of disclosure to Mrs. Geyer and the unreasonable provision made for her.

ORDER OF COURT

NOW, this 22nd day of March, 1983, the petition of George W. Geyer, III, Executor of the Last Will and Testament of George W. Geyer, deceased, to set aside the election of Rosalie S. Geyer to take against the decedent's will is denied.

Exceptions are granted the petitioner.

GETTYSBURG NURSING HOME ASSOCIATES V. CROFT,
C.P. Franklin County Branch, No. A.D. 1982-112

Assumpsit - Collateral Estoppel - contract comprising several instruments - Third party beneficiary - Unjust enrichment

1. A contract may be expressed in more than one writing, that are interpreted together.

2. Where a contract comprises more than one writing, the parties need

not be the same so long as they pertain to the same transaction and their interpretation is aided by reading them together.

3. To entitle a person to maintain an action on a contract to which he is not a party, it must clearly appear that it was the purpose of the contract to impose an obligation on one of the contracting parties in favor of the person claiming the right to action.

4. Where wife did not sign contract for nursing home care for herself, but husband did, wife is liable to the home under the theory of unjust enrichment.

Denis M. Dunn, Esquire, Attorney for Plaintiff

Robert C. Schollaert, Esquire, Attorney for Defendant

OPINION AND ORDER

GARDNER, ROY A., P.J., 44th Judicial District, specially presiding, July 22, 1983:

Defendant, Florence Croft, was admitted to the Guilford Convalesarium,¹ plaintiff, on April 1, 1981. Accompanied by his attorney, Robert E. Graham, Esquire, Mrs. Croft's husband, E. Ray Croft, defendant, entered into an agreement with plaintiff on April 1, 1981, which he attempted to terminate by letter dated January 8, 1982.

Three contracts are the subject of this dispute. First, an "Admission Agreement" dated April 1, 1981, between "The

¹Guilford Convalesarium was owned and operated by Michael Investments from April 1, 1981, until December 30, 1981, when Gettysburg Nursing Home Associates, Inc. became the owner and operator. Two previous suits, *Michael Investments, Inc., t/d/b/a Guilford Convalesarium v. E. Ray Croft and Florence Croft*, No. A.D. 1981 - 213 (C.P. Franklin County), and *Michael Investments, Inc., t/d/b/a Guilford Convalesarium v. E. Ray Croft and Florence Croft*, No. A.D. 1982 - 10 (C.P. Franklin County) were brought to recover the sums incurred from April 1, 1981, until December 30, 1981. In one, the Honorable John W. Keller entered a judgment for plaintiff on the pleadings and in the other, defendants agreed to have judgment entered against them which was subsequently satisfied.