

GREGORY A. DENNIS v. BRENDA DENNIS
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2000-1599

Petition to Enforce Marital Agreement; Cessation of Alimony; Definition of Cohabitation as Defined by Agreement; Interpretation of Agreement by Contract Law; Award of Attorney Fees

1. Definition of cohabitation provided in an agreement is the sole definition used in determining whether alimony will be terminated.
2. Pennsylvania statutes regarding alimony and termination of alimony based on cohabitation apply **only** to alimony that is the result of a court-ordered award and not to alimony payments which are made pursuant to a property settlement agreement between parties.
3. Incorporating statutory provisions of terminating an agreement, when it was not provided by the agreement, would seriously impair the rights and expectations of the contracting parties.
4. Parties are expected to carefully draft the agreement and state the circumstances for which alimony would end because the applicable agreement will control over the state's statutory provisions.
5. It is well established that the law of contracts governs the interpretation of marital settlement agreements. Therefore, in interpreting an agreement, the Court must give the words of the agreement their ordinary meaning.
6. Looking at the totality of circumstances, the Court found that the Petitioner's boyfriend shared household expenses as if the parties were husband and wife when the Petitioner and her boyfriend admitted that while they shared a residence he bought gas for the car, shared duties of the children (such as transporting the children, watching the children, etc.) and made meals for the household.
7. With this last element being met, the Petitioner had cohabitated within the definition provided in the Agreement; therefore, the alimony obligation set forth in the Agreement was terminated.
8. The Court may require a party to pay another participant's counsel fees if the party's conduct in commencing the action was arbitrary, vexatious or in bad faith.
9. Where a legitimate dispute between the parties existed and it required court intervention, the Petitioner was justified in seeking court action and therefore the Respondent's request for counsel fees was denied.

Appearances:

Janice M. Hawbaker, Esq., *Counsel for Petitioner*

M. Teri Stiltner, Esq., *Counsel for Respondent*

OPINION

Van Horn, J., January 11, 2006

The matter is before this Court as a result of a Petition to Enforce a Marital Settlement Agreement filed by Brenda Dennis ("Petitioner") on July 8, 2005. In said Petition, the Petitioner alleges that Gregory Dennis ("Respondent") breached the parties' Property and Settlement Agreement ("Agreement") by failing to pay the designated alimony payment under said Agreement since April 2005.[1] The Respondent filed an Answer and Counterclaim for Enforcement of a Marital Settlement Agreement on August 1, 2005. The Respondent believes he is not in breach of the Agreement because this Agreement calls for the cessation of alimony if the Petitioner would cohabit with a member of the opposite sex. Since the Petitioner cohabited with her boyfriend, he requests that the cessation provision be enforced and thus release him from any further alimony obligation. A Hearing on all issues was held on Tuesday, November 8, 2005.

Both parties acknowledge that they mutually entered into the Agreement on August 5, 2002. In this Agreement, the Respondent agreed to pay the Petitioner the sum of \$1,200 per month for a period of seven (7) years. See Property and Settlement Agreement, Petitioner Exhibit 1. However, this stipulated amount would cease if the Petitioner would remarry or cohabit with a member of the opposite sex. Cohabitation is defined in the Agreement as "residing with a member of the opposite sex who is not related by blood or marriage for a period in excess of one (1) month and with whom there is a sharing of household expenses as if the parties were husband and wife." See Property and Settlement Agreement, Petitioner Exhibit 1 (Paragraph 19). The parties are in disagreement as to application of this cohabitation definition stated within the Agreement to the circumstances in this case.

For the Petitioner, it is her position that she is entitled to continue receiving alimony under the Agreement because she did not cohabit with a member of the opposite sex as defined in the Agreement. The Petitioner does admit that her boyfriend, Mr. Justin Ruckman, resided within her home for a period of time in excess of one (1) month.[2] However, the Petitioner disputes that the parties shared household expenses as if they were husband and wife. The Petitioner testified that she only provided him with a place to stay while he got himself back on his feet. Mr. Ruckman, as per the testimony of the Petitioner and Mr. Ruckman himself, was unemployed at the time of the shared living arrangement and failed to contribute to any of the household expenses. The Petitioner stated that Mr. Ruckman did not pay for any utilities or any other aspects of the couple's home life. Therefore, since the Agreement contained a specific definition of cohabitation that included the element of sharing household expenses, the Petitioner argues that Mr. Ruckman's lack of contribution should lead to the conclusion that the alimony obligation is not terminated.

In response, the Respondent paints a different picture of the living arrangement of the Petitioner and Mr. Ruckman. The Respondent believes that when they resided within the same household they lived as husband and wife.[3] First, the Respondent disagrees that Mr. Ruckman was unemployed at the time he moved into the Petitioner's residence. Several witnesses testified that he was working for friends by completing small construction jobs. Furthermore, another house resident at the time, Ms. Kelly Friend, testified that the Petitioner would complain about the amount of money that Mr. Ruckman was bringing into the home. From this combined testimony, the Respondent suggests the inference that he was in fact employed and bringing money into the household from these "odd jobs." Secondly, the Respondent presented evidence as to the Petitioner and Mr. Ruckman's social life. According to this testimony, the couple went out at least once a week. The Petitioner did not state who in fact covered the costs of these evenings. Again, the Respondent would suggest another inference in that the couple either split the costs or Mr. Ruckman covered the expense of these activities. Overall, the Respondent believes that the cohabitation definition should be given meaning by using a common sense approach and not the literal approach argued by the Petitioner. The Respondent believes that "sharing household expenses as husband and wife" does not mean that there is an equal division of financial responsibilities. Even if the Petitioner's funds were used for household and day-to-day living expenses, Mr. Ruckman contributed to the household by taking the children to school or activities, paying for gas in the car, buying materials for the home, purchasing groceries for food, and spending money on the couple's social life. Therefore, although the couple did not live with a dollar-to-dollar contribution, the Respondent argues that they still "shared" in household expenses when one looks at the circumstances surrounding their living arrangement, so the alimony obligation should be terminated.

After reviewing the record and reading the letter briefs submitted by counsel, the matter is now ripe for decision.

Discussion

The issue before the Court is whether the Petitioner's conduct constituted cohabitation within the definition of the parties' Agreement so that Respondent is relieved from his responsibility of paying alimony.

The Court first notes that the definition of cohabitation provided in the Agreement will be the sole definition used in determining whether the alimony will be terminated. Based on the case law provided by the Petitioner, the Pennsylvania statutes regarding alimony and termination of alimony based on cohabitation apply "only to alimony which is the result of a court ordered award, and not to alimony payments which are made pursuant to a property settlement agreement between parties." Woodings v. Woodings, 601 A.2d 854, 856 (Pa. Super. 1992), see also Lobaugh v. Lobaugh, 753 A.2d 834, 836 (Pa. Super. 2000). This decision is a result of the agreements embodying many considerations and compromises by both parties, and this *quid pro quo* agreement may not be apparent on its face. Id. at 859. The Woodings Court stated that incorporating statutory provisions of terminating alimony, when not provided in agreements, would seriously impair the original rights and expectations of the contracting parties. Woodings, 601 A.2d at 858. The Pennsylvania Supreme Court, Kripp v. Kripp, 849 A.2d 1159 (Pa. 2004), further affirmed the above in holding that there was no evidence to establish that the drafters of the Divorce Code intended for the definitions contained therein to control in situations involving private agreements. With the above precedent, it is clear that parties are expected to carefully draft agreements and state the circumstances for which alimony terminates because the applicable provisions will control over the state's statutory provisions.

The alimony obligation in this case was not a result of a court order; the parties agreed to an alimony obligation in their Agreement of August 5, 2002. In this Agreement, the parties included a provision stating that alimony would be terminated upon cohabitation with a member of the opposite sex. The Agreement moves on further to specifically define cohabitation. Based on the precedent established, the definition in the Agreement is the only definition to be considered, and the usually applicable Pennsylvania statutes will not be considered. Therefore, the Court will need to give a meaning behind the definition of cohabitation stated within Paragraph 19 of the Agreement.

As the Court reads the Agreement, it finds that there are three elements that must be fulfilled for cohabitation to exist pursuant to the Agreement. First, the Petitioner must reside with a member of the opposite sex who is not related by blood or marriage. Second, the Petitioner must live with this individual for a period of one (1) month. And third, the cohabitating couple must share the household expenses as if the parties were husband and wife. Through both the evidence at the hearing and submitted documents with this Court, the parties admit that there is no conflict with finding that the first two elements of cohabitation are fulfilled. The Petitioner acknowledges that she resided with her boyfriend, Mr. Ruckman, for a period of more than one (1) month. Therefore, the Court must only determine whether this couple "shared the household expenses as if the parties were husband and wife."

It is well established that the law of contracts governs the interpretation of marital settlement agreements. Kripp, 849 A.2d at 1163, citing Vaccarello v. Vaccarello, 757 A.2d 909, 914 (Pa. 2000). In interpreting an agreement by the law of contracts, the court must give the words of the agreement their ordinary meaning. Id., citing Pines Plaza Bowling, Inc. v. Rossvie, Inc., 145 A.2d 672 (Pa. 1958). In order to do so, the Court agrees with the Respondent and finds that a common sense approach to the definition is best used for this case. The Court was not convinced from the evidence presented that Mr. Ruckman did not contribute in any way to the home that the couple shared. The quality and quantity of the financial contribution is not a factor for the Court's determination. The Agreement only terminates alimony when the Petitioner would **share** in the household expenses; it does not state that the new individual would need to pay for a certain amount of the bills or certain types of bills. As stated in testimony, Mr. Ruckman contributed to the household by buying gas for the car, sharing duties of the children (such as transporting the children, watching the children, etc.) and periodically making meals. Looking at the totality of circumstances, the Court is convinced that the Petitioner and Mr. Ruckman shared household expenses as if the parties were husband and wife; therefore, the alimony obligation is terminated as per the Agreement.

Relief Granted

The Court has concluded that the Petitioner was cohabitating as defined in the Agreement; therefore, the Respondent's alimony obligation is terminated. However, the determination of the effective date of this termination needs to be addressed. As part of the Respondent's letter brief, the Respondent requests that the Petitioner's right to receive alimony should be terminated as of the starting date of cohabitation. The Respondent first believed that Mr. Ruckman began residing in the Petitioner's home sometime in late January 2005 or early February 2005; whereas, the Petitioner stated in testimony that Mr. Ruckman resided with her since her son's birthday in March. Now, from the subsequent filed letter briefs, the Respondent seems to be willing to accept a cohabitation start date of March 2005.

In keeping with the rationale that the parties' Agreement controls, the Court believes the obligation terminated at the time that the cohabitation period reached the one-month mark because this

cessation point was stated within the Agreement. Based on the admission of the Petitioner that the cohabitation began in March, the Court believes that alimony should be terminated as of April 2005. The Respondent was current with his obligation at this date; [4] therefore, he satisfied his alimony obligation fully and no arrearages are due to the Petitioner.

As far as the request for attorney fees for the Respondent, the Court will not award the requested amount. Courts may require a party to pay another participant's counsel fees if the party's conduct in commencing the action was arbitrary, vexatious or in bad faith. See generally 42 Pa.C.S.A. § 2503. In this case, the definition of cohabitation was not plainly defined from the face of the Agreement. Therefore, the Court holds that a legitimate dispute between the parties existed and required Court intervention for resolution. Since the Petitioner was justified in seeking court action, the Court hereby denies the request for counsel fees.

Conclusion

The alimony obligation set forth in the parties' Property and Settlement Agreement dated August 5, 2002 is hereby terminated based on the conclusion that the Petitioner had cohabitated within the definition provided in said Agreement. The alimony termination is effective as of April 2005. The Respondent was current in his obligations; therefore, the Petitioner is not owed any back alimony payments. Finally, the Respondent's request for attorney fees are hereby denied as a result of the Court concluding that the Petitioner's actions were not arbitrary, vexatious or asserted in bad faith.

ORDER OF COURT

And now this 11th day of January, 2006, after consideration of Petitioner's Petition to Enforce Marital Agreement, Respondent's Counterclaim for Enforcement of Marital Agreement, briefs submitted by counsel and evidence presented in the hearing on the matter, it is hereby determined that in light of the totality of the circumstances, the Petitioner cohabitated within the definition provided in the parties Property and Settlement Agreement, therefore, it is hereby ordered that Petitioner's petition is denied and Respondent's counterclaim is granted. Therefore, the Respondent's alimony obligation is terminated effective as of April 2005. Respondent's request for attorney fees is hereby denied as a result of the Court's conclusion that the Petitioner's actions were not arbitrary, vexatious or asserted in bad faith.

[1] The Court notes that an April alimony payment was made but this payment was actually the alimony due for March of 2005. The Respondent admitted at the hearing that he was typically a month behind on his obligation.

[2] Mr. Ruckman has since left the residence. Despite testimony by the Petitioner and Mr. Ruckman, the date of his departure is unknown. Mr. Ruckman testified that he left the residence a "couple of weeks" before school started for the year. The Court, along with counsel, assume that Mr. Ruckman moved from the Petitioner's residence sometime in early August.

[3] In fact, the Respondent suggests that the Petitioner and Mr. Ruckman would still be residing within the same household if the issue of alimony termination was not being considered by this Court.

[4] An alimony payment was received in April 2005, but this payment was considered the March 2005 obligation payment.