
Litigating the Prenuptial Agreement

By Stewart C.W. Weiner

A client, Ginger, raises the following issue. Ginger's husband Roy and Ginger signed a prenuptial agreement 6 years ago. Despite their best efforts, the parties were unsuccessful in their marriage and they have decided to get a divorce. Although Ginger signed the prenuptial agreement 6 years ago, she does not want the prenuptial agreement to be enforced because upon reflection she believes she might do better in court if she had not signed it.

Ginger has asked us the following questions: (a) will the court enforce the prenuptial agreement as written? (b) what factors will the court consider in evaluating the prenuptial agreement? and (c) is it worth it for Ginger to contest the enforceability of the prenuptial agreement?

Prenuptial agreements have been enforced by Michigan courts for approximately 25 years since the case of *Rinvelt v Rinvelt*, 190 Mich App 372 (1991) was decided. In *Rinvelt* the Michigan Court of Appeals reviewed the history of prenuptial agreements in the State of Michigan and made extensive reference to the Michigan Supreme Court decision of *In Re Benker Estate*, 416 Mich 681 (1982). *Benker*, in turn, made reference to a state statute that had been in effect, MCL 557.28. MCL 557.28 provides that a "contract relating to property made between persons in contemplation of marriage shall remain in full force after marriage takes place."

The *Benker* court explained the following factors that courts would review and analyze in deciding whether or not to enforce a prenuptial agreement:

"...to be valid, it must be fair, equitable, and reasonable in view of the surrounding facts and circumstances. It must be entered into voluntarily by both parties, with each understanding his or her rights and the extent of the waiver of such rights. *Hockenberry v Donovan*, 170 Mich 370, 380; 136 NW 389 (1912)."

As the Court of Appeals in *Rinvelt* determined, the "party challenging the agreement bears the burden of proof and persuasion" *Id.* at 383.

Since the *Rinvelt* decision, many courts throughout the state of Michigan have analyzed and evaluated numerous challenges to the enforcement of prenuptial agreements. Based on approximately 25 years of experience and decisions involving prenuptial agreements, it is safe to say that if the prenuptial agreement at issue satisfies the following factors, the courts in most cases will enforce such agreements:

1. The parties are each represented by independent counsel, or have been given the opportunity for such representation.
2. The prenuptial agreement was fair and equitable when the agreement was executed. If the agreement was or appears unconscionable the courts may not enforce the agreement.
3. The facts and circumstances have not changed so much that at the time of divorce it might be unfair and unreasonable to enforce the agreement.
4. There has not been duress, undue pressure or other circumstances that would suggest that the decision to sign the prenuptial agreement was not voluntary.
5. There has been a fair and reasonable disclosure of the assets and liabilities of each party.

Parties seek our representation in preparing and negotiating prenuptial agreements for a variety of reasons. A listing of common reasons include the following: (a) a client has been married before and is attempting to protect the assets that he or she obtained in a prior marriage, often for the benefit of the children of the prior marriage; (b) a client's parents want their family financial legacy protected in the event that the marriage is unsuccessful; (c) protection of an ownership interest in a business; (d) a client who had a terrible experience in a prior divorce wants more control over the process and hopes to avoid or limit legal expenses in the event the marriage does not work out.

Although I have prepared numerous prenuptial agreements through the years, I recently faced an unusual experience. I had prepared a prenuptial agreement roughly 10 years ago for a client. Recently, the client came in to tell me that he wanted to get divorced. It just was not working out. The wife fought the divorce because she felt that she could do better in court if the court rejected the prenuptial agreement. The wife threatened to drag the divorce out for 5 years and

made a number of disturbing statements and threats against the husband. The situation became very adversarial. After various preliminary exchanges of information and facts concerning the circumstances surrounding the execution of the prenuptial agreement, we were satisfied that the wife did not have a legitimate challenge to the enforcement of the prenuptial agreement. We therefore filed a motion to enforce the prenuptial agreement. Although she was upset, the opposing spouse ultimately changed her mind and agreed to the original terms of the prenuptial agreement. This decision saved thousands of dollars in legal fees for both parties, saved a significant period of time and enabled the parties to move forward with their respective lives. One of the major obstacles that the wife had was that she needed time, and the assistance of counsel, to truly process and understand that the prenuptial agreement that she had signed 10 years ago, was in fact fair and reasonable and that she was going to receive a reasonable settlement. The initial emotions of the circumstances leading to the decision to divorce initially controlled the situation. Instead of 5 years, the divorce took 4 months to complete. The parties were able to cooperate during the divorce process and the acrimony dissipated.

A prenuptial agreement may not be the right decision in every situation and for every person. But having a prenuptial agreement in place can be beneficial in many situations and can offer clarity and piece of mind. To learn more or to have a further discussion please contact Stewart Weiner at 248-827-1890 or sweiner@maddinhauser.com.