

YUDES FAMILY LAW CITATOR

FALL 2022 SUPPLEMENT

CHAPTER 1: ALIMONY

XI. ANTENUPTIAL AND OTHER AGREEMENTS

D.M.C. v. K.H.G., 471 N.J. Super. 10 (App. Div. 2022)

The parties were married for thirty-one (31) years. In 2016, a Complaint for Divorce was filed by the Plaintiff-husband. The Plaintiff owned a tavern along with various other businesses and properties. The Defendant had been employed as a Guidance Counselor; however, she had suffered from various mental health issues during the marriage, including numerous psychiatric in-patient hospitalizations, and which included a breakdown following the filing of the Divorce Complaint. Five months into the litigation, the parties entered into a Consent Order appointing an attorney to serve as *Guardian ad Litem* on behalf of the Defendant. As the Defendant's mental status deteriorated, the GAL filed an action with the Probate Part to grant a Judgment of Guardianship and to appoint the Parties' two (2) adult children as Co-Guardians for the Defendant. That request was supported by two (2) medical evaluations which concluded that the Defendant did not have the cognitive capacity to make decisions for herself. A judgment declaring the Defendant incapacitated was entered and the parties' two (2) children were appointed as the Defendant's Co-Guardians.

Subsequently, a Settlement Conference was conducted attended to by both counsels, the Plaintiff, the Co-Guardians, and the GAL, after which a settlement was reached. Among other things, that Agreement provided for a tax free alimony buyout, the sale of the marital residence and equal division of the proceeds, and equalization of the Parties' retirement assets, the Defendant's receipt of forty (40%) percent of the value of three corporate real estate entities, thirty (30%) percent of the value of the Plaintiff's interest in the tavern and fifty (50%) percent of the value of certain loans receivable. The valuations utilized were those of Plaintiff's accounting expert. The Agreement provided for the Plaintiff to pay the Defendant her share of the assets in 180 monthly installments, which obligation was secured by a Stock Pledge Agreement and mortgage. Given the Defendant's circumstances, the Agreement also provided for the establishment of an Irrevocable Trust naming the Defendant as beneficiary, and with the parties' children serving as Trustees.

Approximately a year later, the Defendant obtained evaluations from two (2) doctors who concluded that the Defendant had returned to mental competency along with an updated evaluation from one of the doctors who had previously evaluated her who reached a similar conclusion, that he believed she was no longer a candidate for Guardianship, however he recommended that the children continue to monitor her because she remained at high risk of having another "psychiatric decompensation and/or decided to stop taking her medication" given her history. In December 2019 the Probate Part Judge terminated the Guardianship and declared Defendant competent. In November of 2020, the Defendant filed a Post-Judgment Motion seeking to vacate the earlier Judgment of Divorce and Property Settlement Agreement or alternately, modify the alimony and Equitable Distribution obligations based on changed circumstances. Defendant alleged that the

children should not have been involved in the divorce because they were not neutral parties and were under the Plaintiff's financial influence and control. She claimed that the agreement's alimony and equitable distributions were grossly inadequate, that the payment of equitable distribution over time and into a Trust was patently unfair and contended there was a substantial change in circumstances because she was no longer incapacitated and did not require long-term care. The Trial Court denied Defendant's motion in its entirety, concluding that the Settlement process was fair as there was no bar to the children serving as guardians merely because they stood to inherit from the Plaintiff, there was no evidence the children were financially motivated, and rejected the arguments that the GAL was influenced because Plaintiff paid her bills from marital funds. The Trial Court also found that given the circumstances, the terms of the settlement were not unconscionable, opining that the alimony provision was a product of negotiations since the Plaintiff was approaching retirement age, that the equitable distribution amount was nearly equal and that mere disagreement with the expert who valued the assets was not grounds to undo same, and further noting that the Defendant's return to competency did not constitute grounds to set aside the agreement because there was evidence she could relapse. The Defendant appealed.

The Defendant asserted that she had demonstrated that the settlement process as well as the settlement itself were unfair and unconscionable, thereby meeting the exceptional circumstances standard to vacate the PSA under *R. 4:50-1(f)*. Defendant argued that the principle articulated in the case *Marsico v. Marsico*, 436 *N.J. Super.* 483 (Ch. Div. 2013) which held that GAL cannot have a personal interest in the case should also apply to the children's appointment as her guardians because they were not neutral and were under Plaintiff's control. The Defendant also pointed to what she claimed to be the unequal distribution of the business and loans receivable, the lump sum alimony, the payout of equitable distribution over time and the division of her retirement account as evidence of the Agreement's unconscionability. The Appellate Division rejected the Defendant's argument. First, the Appellate Division stated that the Defendant's reliance on *Marsico* was misplaced because the case addressed the role of a GAL, and the parties' children were not Court appointed as GALs nor was that decision binding upon them. Further, they found no impropriety in the appointment of the children as the Defendant's Co-Guardians, noting that the Defendant had produced no objective evidence to support her claim that the children, who were emancipated at the time of their appointment, were under Plaintiff's financial control or acted against her interests. Instead, the objective evidence in the record showed that the children had protected the Defendant by taking prudent measures to control the cost of the litigation and settling the case along with the GAL who was a competent attorney, as well as the assistance of a matrimonial attorney.

With respect to the settlement itself, the Appellate Division noted that the equitable distribution of marital property was intimately related to support, and the power to distribute property equitably should be exercised to relieve the strain of total reliance of support payments for financial security. The fact that the parties used the valuation figures presented by Plaintiff's expert to settle the case did not establish the alleged unconscionability of the PSA and was not unusual in Matrimonial cases, particularly whereas here the Defendant offered no evidence establishing that the valuations the parties relied upon were incorrect other than to argue that the Guardians should not have terminated her expert. Nor was the Appellate Division convinced that this settlement was unconscionable because the assets were not divided equally noting that this was not unusual whereas here, one party operated a business subject to equitable distribution but retained the risk associated with an asset. Regardless the Appellate Division found that the