

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001025-MR

DARYL A. KELLY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS J. KNOFF, JUDGE  
ACTION NO. 00-CI-003114

JOHN E. BLACKERBY, AS EXECUTOR  
FOR JOHN ALLEN KELLY; RICHARD A. KELLY,  
MICHAEL A. KELLY AND PATRICIA A. HALL

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: GUDGEL, CHIEF JUDGE; JOHNSON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Daryl A. Kelly appeals from a judgment in favor of the estate of her husband, John Allen Kelly, in her action to elect against her husband's will. The circuit court enforced a prenuptial agreement in which Daryl promised not to elect against her husband's will or take an intestate share if he died without a will. Daryl argues on appeal that the circuit court improperly applied the law in upholding the prenuptial agreement and urges us to hold that the prenuptial agreement was unenforceable. We affirm.

The facts surrounding the prenuptial agreement are undisputed. John and Daryl had dated for approximately nine years before deciding to marry, having been engaged the two years just prior to their marriage. John was a widower, his first wife having died due to an illness in 1983. John had also lost one of his four children in an accident, earlier. Due to those unfortunate events, John had a sizable amount of money from insurance settlements, and decided prior to the wedding that a prenuptial agreement was needed to preserve that money for his surviving children. The agreement was drafted only a week before the wedding by a lawyer friend of John's, Donald H. Smith. Daryl testified that she did not carefully read the document prior to signing it. The agreement included a list of the property owned by John prior to the marriage, but did not place a dollar value on the two separate parcels of real estate, nor did it place a dollar value on 300 shares of LG&E stock.

Daryl challenged the agreement based on an alleged lack of full disclosure of assets and that she did not have a full and fair opportunity to review the document with her own, independent counsel. The circuit court held that Daryl did, however, have a full and fair opportunity to review the document, but chose not to do so, and that John complied with the full disclosure requirements even though he did not specifically list a dollar value on the real estate or the stock. This appeal followed.

Daryl makes the argument that the lack of a dollar value on the two pieces of real property constitutes a lack of full disclosure. We cannot agree. John appears to have made a

good faith effort to disclose the full extent of his holdings. The circuit court noted that the agreement includes an acknowledgment by both parties that the other has made a full disclosure. Daryl relies on Luck v. Luck, Ky., 711 S.W.2d 860, 863 (1986) for the proposition that full disclosure is essential to the validity of a prenuptial agreement. This is correct; however, this case is unlike the situation presented in Luck, wherein the agreement failed to include a disclosure of assets from either party. Here, there was a disclosure of assets, but the disclosure did not include a specific dollar value on either the real property or the stock. We cannot agree with Daryl that this constitutes a lack of full disclosure on John's part. The real property is listed by specific address, and Daryl, having dated John for nine years prior to their marriage, must have been familiar with those two pieces of real property and had some idea of their approximate value. With respect to the stock, it would have been impractical to place a dollar value on the stock, as stock prices fluctuate, sometimes considerably. Moreover, Daryl has neither alleged nor proven any concealment of assets or any bad faith on John's part at all; the property listed in the prenuptial agreement would appear to be the extent of John's property at the time of their marriage. Therefore, we reject Daryl's argument with respect to full disclosure. The record further shows that one of the two parcels of real property listed in the prenuptial agreement was deeded to Daryl by John, after their marriage, by a deed of joint survivorship.

Turning to the question of whether Daryl effectively waived her right to consult with counsel, we agree with the circuit court that she did. The court reasoned in its opinion that "Daryl testified that she did not read the antenuptial agreement because she trusted Don Smith (John's attorney friend) and her soon-to-be husband, John, and did not feel like she would be taken. Even assuming that there was some sort of misrepresentation and Daryl was induced to sign the antenuptial agreement, she cannot be said to have exercised ordinary care in not reading it given that the idea of an antenuptial agreement had been discussed a month before the wedding. . . ." Circuit Court's Opinion and Order of February 2, 2001 at 7. Daryl cites Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990) for the proposition that the law recognizes that a person does not necessarily act in their own best interest when prenuptial agreements are signed. We understand Daryl's position that she acted in haste in signing the agreement. We cannot agree, however, that she exercised even a minimal amount of ordinary care, even recognizing the proposition she has cited. Daryl testified that she failed to read the agreement at all prior to signing it. The circuit court held that such failure would constitute a waiver of her right to consult with independent counsel before signing the agreement. We agree with the circuit court, and affirm its decision.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT

BRIEF FOR APPELLEES:

Homer Parrent, III  
Gaye Lynn McGuffey:  
Louisville, Kentucky

Grant M. Helman  
*Smith & Helman*  
Louisville, Kentucky