

Family Law Update

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Federal Court Recognizes Contractual Rights Benefitting Domestic Partners

By Robert W. Tubbs, Attorney

Although the State of Michigan does not recognize rights of domestic partners, the United States Court of Appeals for the 6th Circuit, which encompasses Michigan, recently issued an opinion that recognizes under federal law contractual rights, in this case, life insurance policies, for domestic partners. In the case of *Union Security Insurance Company v Blakeley*, the Court of Appeals reviewed a lower court ruling to determine whether the proceeds of a life insurance policy were to be distributed to the children of a deceased parent or to the deceased's domestic partner.

In this case, the deceased was survived by three children and a cohabitant, purported to be a fiancée. The deceased had a life insurance policy, but neglected to name a beneficiary. In the absence of a named beneficiary, the policy provided that the proceeds were to be paid in the following order: insured's spouse, domestic partner, children (or the domestic partner's children), living parents, and his or her estate. The dispute was whether the fiancée was a "domestic partner."

Although the plan had no specific definition of "domestic partner" for purposes of determining the beneficiary of the life insurance policy, the plan did provide for life insurance coverage for a

"domestic partner" and set forth criteria to determine who would qualify for this coverage. These criteria were 1) there is either a "committed relationship of mutual caring existing for at least six months," or the parties have met the requirements for registration as domestic partners, if permitted, and are so registered; 2) both parties are at least 18 years of age and mentally competent to consent to contract; 3) neither party is married to another person and the relationship is mutually exclusive; 4) the parties are not related by blood any closer than would prohibit legal marriage; 5) the parties are financially interdependent; 6) the parties each have a power of attorney for the other; and 7) at least six months have elapsed since similar coverage was terminated on a previously insured domestic partner, unless that previous partner had died. These criteria help to distinguish a true partner from a friendly roommate or a casual significant other. Given this criteria, the magistrate judge determined that the fiancée qualified as a "domestic partner."

Notably, nowhere in these criteria does it state that the parties must be of the opposite sex. As a result, the 6th Circuit Court of Appeals appears to be ready to accept some legal rights of same sex relationships, provided that they are not otherwise excluded under the contract in question.

Michigan does not recognize domestic partners. However, the federal courts are beginning to recognize such relationships, at least with respect to determining specific contractual rights given to domestic partners. This can have ramifications to unmarried couples, whether same sex or not, who, under Michigan law, would otherwise have no recognizable legal rights. Care should be taken to

understand whether one is a party to a contract which may provide these rights to a domestic partner.

Rob focuses his practice on family law and litigation. He is a certified collaborative divorce attorney and can be reached directly at rtubbs@shrr.com or 231-486-4535.

Enforceability of Property Settlement Agreements

By Michael D. Lewis, Of Counsel

During contested divorce proceedings, the parties are often ordered to undergo facilitative mediation and, if necessary, attend settlement conferences that are supervised by court personnel. These proceedings can be emotionally stressful to both parties. After long days of mediation or settlement negotiations, parties often sign settlement agreements just to end the stressful sessions. Under Michigan law, such agreements are enforceable if they are made in open court or were in writing and signed by the parties or their attorneys.

Regularly, parties involved in such stressful negotiations develop buyer's remorse and attempt to rescind their agreements. They will find this very difficult because since at least the 1960s, the Michigan appellate courts have held that such negotiated property settlement agreements are "not only lawful, but are to be commended." The agreements are enforceable absent fraud, duress, or mutual mistake. They don't even have to be fair. The courts will not rewrite or abrogate unambiguous agreements negotiated and signed by consenting adults by imposing a reasonable or equitable inquiry on the enforceability of such agreements. They will only consider whether they were signed freely, voluntarily, and with understanding. Such agreements are entitled to a high degree of finality.

The following is a non-exhaustive list of legal theories lawyers use to try to persuade the courts to release clients from signed agreements reached during divorce proceedings:

Fraud

In order to prove fraud, a person seeking to set aside his/her written agreement must establish that the opposing party misrepresented a significant existing fact knowing that the innocent party would make a decision based on that misrepresentation, and that in fact the innocent party did reasonably make a decision based upon the false representation. A promise to act in the future is not a misrepresentation of an existing fact.

Mutual Mistake of Fact

A person claiming mutual mistake must show that both parties were mistaken concerning an existing material fact. In most cases, only the person seeking to invalidate the agreement was mistaken about the fact in question.

Stress

Negotiation during a divorce proceeding is emotionally stressful. Someone seeking to avoid

his written agreement will occasionally claim that he only signed the agreement because he was severely mentally stressed when he did so. The courts have held, however, that only when a person is completely mentally incapable of forming a contract, will the claim of stress provide relief.

Duress

In order to establish duress, a person seeking to invalidate a signed property settlement agreement must show that the opposing party was not only controlling or abusive, but actually engaged in behavior that reasonably caused him to sign the agreement in order to avoid personal injury, wrongful financial devastation, or injury to others, like family members.

Fraud in the Inducement

Fraud in the inducement occurs when someone materially and falsely represents future conduct under circumstances in which assertions may reasonably be expected to be relied upon and the innocent party does rely upon them. If both parties are aware that promises of future conduct are unlikely, there can be no claim of fraud in the inducement.

Failure of Consideration

Failure of consideration that warrants a rescission of the property settlement agreement occurs when there exists a failure to perform a substantial part of the contract, or when the contract would not have been made if default in that particular provision had been expected or contemplated. It is a rare circumstance where consideration completely fails.

Conclusion

Michigan courts are far more likely than not to enforce written property settlement agreements between consenting adults. Claims of duress, fraud, or mutual mistake will not succeed without compelling evidence. Courts have repeatedly signaled their unwillingness to rescue parties from bad bargains. Divorcing parties should be aware that when they enter into mediation or attend settlement conferences, any written agreements they sign, or any settlement presented orally to the judge on the open record, will likely be binding.

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Inherited IRA Exempt from Bankruptcy – An Update

By George F. Bearup, Attorney

The law recently became a bit clearer with regard to inherited IRAs and how they are treated in bankruptcy.

In yet another decision, a federal court has held that a debtor's inherited IRA met the requirements as an exempt asset under the federal Bankruptcy Code. The Court reversed the bankruptcy judge's

decision and found that the assets held in a debtor's inherited IRA do not have to be the "retirement funds" of the actual debtor in order to satisfy the bankruptcy law's exemption requirements. The Court concluded that an inherited IRA meets the requirement of the Tax Code that any individual retirement account is exempt from taxation; accordingly, any

differences between a traditional IRA and an inherited IRA are irrelevant for bankruptcy exemption purposes.

This decision is consistent with five other federal court decisions in the past two years that have held

that an inherited IRA is exempt from a bankrupt's estate.

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News & Successes From Smith Haughey

Mary Pigorsh and **Megan Smith** successfully represented their client, a father, in a custody dispute. The circumstances of the case were complex. However, Megan articulated key points in her client's favor before the judge and obtained a favorable ruling, which allowed the parties to resolve the custody dispute with the aid of the Friend of the Court.

Lindsay Weber successfully assisted her clients in the adoption of two children who were siblings from abused backgrounds. Lindsay's clients had been the children's foster parents. The judge originally denied their request to adopt the

children, however after Lindsay petitioned the court for an evidentiary hearing and presented numerous witnesses, the judge reversed his opinion and approved the adoption.

Smith Haughey recently held a seminar, **"Practical Tips for Reducing Your Property Tax Bill."** At this seminar in Traverse City, our attorneys spoke to a large group of homeowners and business owners about the property tax assessment process, how to dispute an assessment, exceptions to the uncapping rule when there is a transfer of property, and ways to qualify for homestead and agricultural exemptions.

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