

ORIGINAL

IN THE SUPREME COURT OF OHIO

AMBER WILLIAMS

Appellant,

Vs.

FREDRICK ORMSBY

Appellee.

CASE NO.

10-1946

On Appeal From The
Ninth Appellate District, Medina, Ohio

Court of Appeals
Case No. 09CA0085-M

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLEE FREDERICK ORMSBY

L. Ray Jones (0011508)
P.O. Box 592
Medina, OH 44258
330 722-1234

COUNSEL FOR APPELLANT, AMBER WILLIAMS

Michael L. Laribee (0066629) (Counsel of Record)
Chris D. Carey (0063307)
Laribee & Hertrick, LLP
325 North Broadway Street
Medina, OH 44256
(330) 725-0531

COUNSEL FOR APPELLEE, FREDERICK ORMSBY

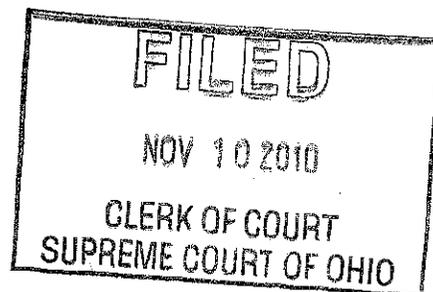
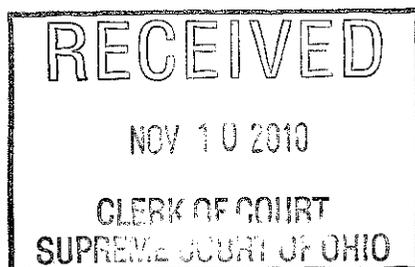


TABLE OF CONTENTS

TABLE OF CONTENTS ii

EXPLANATION OF WHY ISSUES RAISED IN THIS CASE ARE OF PUBLIC OR
GREAT GENERAL INTEREST 1

STATEMENT OF THE CASE AND FACTS..... 2

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW..... 6

PROPOSITION OF LAW

MOVING INTO A HOME WITH ANOTHER AND RESUMING A ROMANTIC
RELATIONSHIP CANNOT SERVE AS LEGAL CONSIDERATION FOR A
CONTRACT; LOVE AND AFFECTION IS INSUFFICIENT CONSIDERATION
FOR A CONTRACT

CONCLUSION 14

CERTIFICATE OF SERVICE 15

APPENDIX

Decision and Journal Entry Opinion Being Appealed:

Decision and Journal Entry of the Ninth Appellate District, Medina County, Ohio,
Journalized September 30, 2010 Apx. p. 1

I. EXPLANATION OF WHY ISSUES RAISED IN THIS CASE ARE OF PUBLIC OR GREAT GENERAL INTEREST

In 1887, the Ohio Supreme Court stated unequivocally, “[a]n agreement to give for the consideration of love and affection, whether the gift is to be of goods and chattels or of a chose in action, neither transfers the property to the donee, nor secures him a right by suit to compel a completion of the contract.” *Flanders v. Blandy* (1887), 45 Ohio St. 108. At issue here, essentially, is whether that statement remains true.

In this case, the court of appeals has reversed a trial court’s grant of summary judgment based on a lack of valid consideration, holding that cohabitating with someone and resuming a relationship can serve as consideration to support an enforceable contract. The court held that, for persons not already married to each other, “moving into a home with another and resuming a relationship can constitute consideration sufficient to support a contract.”

The notion that a romantic relationship can constitute the bargained-for exchange in a contract raises numerous questions regarding the proof and enforcement of those contracts. What would be one’s remedy in the event the other breached the agreement? Specific performance would be out of the question. Could he receive damages for the benefit of his bargain or would he simply be relieved of his obligations under the contract? Courts have generally considered contracts where only one party is bound to be illusory.

These questions illustrate the problem with relying on love and affection or a romantic relationship as consideration for enforceable agreements.

If a relationship can serve as consideration, it is fair to ask what the term

“relationship” means. The court of appeals’ decision does not specify what type of relationship, though the one between the parties here could be described as a romantic relationship, or that of fiancée and fiancé. Not surprisingly, Black’s Law Dictionary does not have a definition for the word “relationship.” Webster’s Ninth New Collegiate Dictionary defines “relationship” as “the state of being related or interrelated[;] * * * a state of affairs existing between those having relations* * * [; or] a romantic or passionate attachment[.]”

The term is vague--a relationship is a status or a state of affairs, an attachment. The term itself tells us nothing of a particular relationship’s character or quality. From the decision of the court below, one would infer that a relationship necessarily entails sharing and sacrifice. From the word alone, though, we do not know what a particular relationship entails--even enemies have a relationship to one another. A term like “relationship” cannot accurately serve as a substitute for actual services, duties, or sacrifices.

Binding parties to promises based on their cohabitation coupled with a relationship resembles palimony, a cause of action that this state has declined to acknowledge. If permitted to stand, this precedent unnecessarily takes well-settled contract law down a new road in Ohio.

Given these significant principles, this case presents issues of public and great general interest and the Court should exercise its discretionary jurisdiction and review the propositions of law.

II. STATEMENT OF THE CASE AND FACTS

This case involves a dispute over equity in a residence located in Medina, Ohio.

Amber Williams (hereinafter referred to as "Williams") had acquired the home in her 2004 divorce. Unemployed at the time she received it, the property was encumbered by a mortgage of approximately \$310,000.00 that she had no means of paying.

Frederick Ormsby (hereinafter referred to as Ormsby") became romantically involved with Williams in early 2004 and moved into the residence with Williams in May of that year. The parties were soon engaged to be married and planned a January 2005 wedding.

In light of their intention to marry, Ormsby began making Williams' mortgage payments and did so for the months of August through December 2004. He also paid one full year of property taxes for the home.

Ormsby then paid the full balance of Williams' mortgage in the approximate amount of \$310,000.00. In return, Williams transferred full title to the property to Ormsby. The deed was recorded on December 15, 2004.

Thereafter, Ormsby paid for the maintenance of the house, including installation of a new roof, as well as most other bills.

It was not long, however, before the relationship between Williams and Ormsby became tumultuous. The wedding date was canceled, though the parties remained engaged and continued to reside in the property together until early March 2005, when Williams was removed from the property by police pursuant to a restraining order. The parties ended their engagement at that time.

The relationship presumably at an end, the parties drafted and signed a contract to delineate their interests in the real property. The agreement provided that the property

would be sold and that the first \$324,000.00 of the net sale proceeds would be paid to Ormsby to reimburse him for the expenses he had covered--the mortgage of \$310,000, the property taxes, the \$30,000 for repairs and a new roof; the proceeds in excess of \$324,000, if any, would belong to Williams. The agreement also allocated responsibility between the parties for the various expenses associated with the house such as property taxes, insurance, and utilities. All in all, the agreement was a valid contract supported by mutual consideration that divided their interests in the property equitably.

Within weeks of signing the contract describing their interests in the property, the parties attempted to reconcile. They attended couples counseling in May 2005, and on June 2, 2005, executed a second document concerning the ownership of the residence. That document stated that the "parties plan to be married" and that the property "is jointly owned by Rick [Ormsby] and Amber [Williams] and they are equal partners in the same."

The document itself was silent as to the consideration offered by Williams in support of the new agreement. Where the prior contract had required her to pay property taxes and a portion of the utilities, the new agreement required Williams to do absolutely nothing. It not only relieved her of every obligation that she had had under the terms of the March 2005 contract, it granted her a one-half interest in the property, where before she had only been entitled to whatever equity remained after Ormsby had been reimbursed \$324,000.00 for the amounts he had spent on the property.

Williams has stated, nevertheless, in deposition and by affidavit opposing summary judgment, that she refused to move back into the house with Ormsby and refused to continue their engagement unless she received an undivided one-half interest in

the property, contrary to the terms of the parties' March 2005 contract. The only consideration articulated by her to support changes to their existing contractual obligations was moving back into the house and continuing the parties' romantic relationship.

Despite their attempt to reconcile, disagreements continued between the parties. By April 2007, the parties were residing in separate portions of the house. Williams terminated their relationship several months later.

Ormsby continued to live in a separate portion of the property periodically for the next several months, and then moved from the property in April 2008.

In May 2008, the parties filed lawsuits against each other. Williams sought specific performance of the June 2005 agreement. Ormsby's complaint against Williams included claims to quiet title, unjust enrichment and contribution, request for declaratory judgment, breach of contract, and partition. The parties each filed motions for summary judgment.

The trial court issued its Judgment on April 16, 2009, which was amended by Nunc Pro Tunc Judgment Entries on April 22 and 24, 2009, to correct a typographical error related to dates. The trial court granted summary judgment in favor of Ormsby, finding that March 2005 agreement was a valid contract, but that the document signed by the parties in June 2005 was not an enforceable contract because it was not supported by valid consideration. The trial court ruled that the sole remaining issue before it was whether Ormsby was entitled to damages for any breach of the March 2005 contract by Williams.

On appeal, the Ninth District Court of Appeals reversed the trial court's determination, holding that "moving into a home with another and resuming a relationship can constitute consideration sufficient to support a contract." *Williams v. Ormsby* (September 30, 2010) Medina App. No. 09CA0085-M, ¶ 19. The court of appeals further held that the June 2005 contract was not contingent upon marriage, and therefore, the obligations thereunder did not cease when the relationship ended.

III. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

MOVING INTO A HOME WITH ANOTHER AND RESUMING A ROMANTIC RELATIONSHIP CANNOT SERVE AS LEGAL CONSIDERATION FOR A CONTRACT; LOVE AND AFFECTION IS INSUFFICIENT CONSIDERATION FOR A CONTRACT

A contract consists of an offer, an acceptance and consideration. *Carlisle v. T & R Excavating, Inc.*, 123 Ohio App.3d 277, Ninth Appellate District, Medina County.

Without consideration, there can be no contract. *Id.*, see also: *Brads v. First Baptist Church of Germantown, Ohio* (1993), 89 Ohio App.3d 328, 336, 624 N.E.2d 737, 1743.

It is well established that gratuitous promises are not enforceable as contracts, because there is no consideration. *Carlisle v. T & R Excavating* at 283. See also Restatement of Contracts, *supra*, 172-174, Section 71, Comments a and b. A written gratuitous promise, even if it evidences an intention by the promisor to be bound, is not a contract. 2 Corbin, Contracts (Rev.1995) 20, Section 5.3. Likewise, conditional gratuitous promises, which require the promisee to do something before the promised act or omission will take place, are not enforceable as contracts. Restatement of Contracts,

supra, 174, Section 71, Comment c.

The facts of *Carlisle v. T & R Excavating, Inc.*, are quite similar to the instant case. In *Carlisle*, a divorcing couple formed an agreement whereby the husband agreed to perform excavation work for the construction of his wife's preschool at no charge. In determining that there was an enforceable contract between husband and wife, the trial court found that the consideration for husband's promise was the "relationship," and that they both hoped to benefit from the preschool. *Id.* at 284. The court of appeals reversed, citing the Restatement of Contracts and holding that "the relationship between Mr. Carlisle and Ms. Carlisle could not have been consideration for a contract." *Id.* at 284, citing Restatement of Contracts, supra, 173, Section 71, Comment a. (stating: "in consideration of love and affection" is legally insufficient.") See, also, Corbin, Contracts, supra, 90, Section 5.18.

The appellate court in the case at bar declined to follow *Carlisle*, and distinguished *Carlisle* on the basis that the Carlisles were married and the parties in the present action were not. The *Carlisle* court's expansive discussion of the requirement of consideration to support a contract, however, did not focus on the peculiar circumstances of a contract between married persons, but rather about general, well-established contract law. It is respectfully submitted that *Carlisle* would have been a much shorter opinion if the parties' marriage simply barred them from entering a contract.

There is no Ohio case law supporting the idea that a romantic relationship

can serve as valid consideration for a contract. In support of its holding, the court of appeals states that “considering the concept of personal relations in the context of contracts” is not foreign to Ohio jurisprudence, pointing to the 1949 Ohio Supreme Court case of *Snyder v. Warde* (1949), 151 Ohio St. 426. The appellate court begins its discussion of *Snyder* by misstating what is at issue in that case: the court states that consideration required to support a contract to make a will must be more than ordinary services and must involve some sacrifice on the part of the one performing them. There is no such requirement. At issue in *Snyder* was whether the statute of frauds applied to an oral contract to make a will.

In *Snyder*, a housekeeper had sought to enforce an oral agreement to make a will against the estate of her deceased former employer. The issue before the Court in *Snyder* was whether the statute of frauds barred the alleged oral agreement to make a will. The court found that the alleged oral agreement fell squarely within the statute of frauds and that the housekeeper’s claim had no merit. *Id* at 434.

The housekeeper had argued, however, based on two earlier statements of the Court, that if she could prove that the services she had rendered for her former employer were such that they were not intended to be and were not compensable in money, then the contract would not fall within the statute of frauds.

In support of her contention, she provided a lengthy list of the diverse services she had performed for her former employer (cooking, cleaning, canning, laundry, secretarial work, business errands, serving as his driver, caring for him

when he was ill), all of which, the Court concluded, were ordinarily compensable in money: “[i]t is true that plaintiff’s services consisted of hard work and a great variety of tasks, but upon what theory they were not compensable in a pecuniary sense it is difficult for us to grasp.” *Id.* at 436. Indeed, the housekeeper was paid in money--forty dollars per month, along with room and board for herself and her children. *Id.* at 38.

The *Snyder* Court, without addressing the underlying rationale, rejected the housekeeper’s argument, holding that the services she had provided did constitute work that is ordinarily compensable in money, regardless of the development of any friendship between the employer and employee. *Id.* at paragraphs two and three of the syllabus.

The Court in *Snyder* also reviewed numerous cases from various states where courts have granted specific performance of an oral contract to make a will. “[I]n almost every instance,” the Court noted, “the person who had performed the personal services had done so at considerable sacrifice of his own interests.” *Id.* In order for the ordinary services to be noncompensable from a pecuniary standpoint, the Court stated, the services must involve a sacrifice upon the part of the one rendering them, motivated by sentiment rather than expectation of payment. *Id.* at paragraph four of the syllabus.

There is a certain irony that the court below is looking at noncompensable services motivated by sentiment as the bargained-for exchange for an interest real estate with an approximate value of one hundred sixty-two thousand dollars: how

much does one ordinarily pay for noncompensable services motivated by sentiment? What may be more troublesome, though, is that the court of appeals decision presumes that the temporary resumption of a romantic relationship is an equal substitute for the types of great personal sacrifice discussed--but not found--in *Snyder*. Moreover, there is nothing in *Snyder* that states that a romantic relationship may be sufficient consideration for a contract. Rather, *Snyder* stands for the proposition that ordinary services compensable in money will not take an oral contract to make a will out of the statute of frauds.

To further bolster its decision, the court of appeals is forced to look to case law outside of the State of Ohio; even then, its analysis is misplaced.

In support of its holding that agreeing to cohabit in a romantic relationship can serve as consideration to support an enforceable contract, the decision below cites a 1949 Oregon case for the proposition that companionship has been recognized as valid consideration to support an enforceable contract. *Williams v. Ormsby* (September 30, 2010) Medina App. No. 09CA0085-M, ¶19, See *Tiggelbeck v. Russell* (1949), 187 Or. 554, 568, 213 P.2d 156. Like *Snyder*, *Tiggelbeck* also involved specific performance of an oral agreement to make a will. The issue was whether the plaintiff had sufficiently performed her obligations under the agreement so as to take the contract out of the statute of frauds. *Id.* at 565.

Marie Tiggelbeck, a young school teacher, began living as a “roomer and boarder” in the home of Imogen Russell’s parents, where Imogen also resided, in

1924. Id at 560. Over the years, Marie and Imogen developed a close friendship. Imogen, ten years Marie's senior and also a teacher, acquired a life estate in the Russell home following the death of her parents, and continued to keep roomers and boarders for several years. When the home's cook-housekeeper left the job in 1942, Imogen was unable to find a replacement. Also at that time, Marie considered leaving her teaching job and the Russell home to seek employment related to war production in another city. Id at 561. After much negotiation, the women entered into an oral agreement that provided Marie that would stay at the Russell home and help with cooking and housekeeping, she would pay a reduced rent, the two would share living expenses, and that each would leave the other all of her property on death. Each had actually attempted to draft such a will, leaving all of her property to the other, but neither will had the requisite formalities.

At issue in the case was whether the agreement to make reciprocal wills was sufficiently established to take it out of the statute of frauds. After an extensive review of the evidence, the *Tiggelbeck* court found that Marie had changed the course of her life, refrained from moving, and performed extraordinary personal services for Imogen, as promised, for the remainder of her life, which ended in a car accident in 1947. Because there was evidence corroborating the existence of the oral agreement, and because Marie had performed all she was required under the contract, which included ordinary and extraordinary personal services, the agreement was taken out of the statute of frauds.

The court of appeals' decision also looked to the New Jersey palimony case of *In re Estate of Roccamonte* (2002), 174 N.J. 381, 808 A.2d 838, for the proposition that entering into a relationship and conducting oneself as if married was sufficient consideration to enforce a promise for life-long support. However, *Roccamonte* is a palimony case from a state which recognizes a contract of palimony between cohabitating individuals. The court there stated the following, “[i]n *Kozłowski v. Kozłowski*, we recognized that unmarried adult partners, even those who may be married to others, have the right to choose to cohabit together in a marital-like relationship, and that if one of those partners is induced to do so by a promise of support given her by the other, that promise will be enforced by the court.” Id (citation omitted).

Palimony is not recognized by Ohio statute or common law, and Ohio law does not permit a division of assets or property based on cohabitation. See *Lauper v. Harold* (1985), 23 Ohio App.3d 168, 492 N.E.2d 472. Ohio law has steadily moved away from recognizing property interests in romantic relationships. Amatory causes of action were abolished in 1978 through R.C. 2305.29. Common law marriages were prohibited in Ohio by statutory amendment after October 10, 1991. R.C. 3105.12(B)(1)(2). It is respectfully submitted that an analysis of a claim not recognized in this state sheds little light on Ohio contract law.

Even so, the facts of *Roccamonte* are far removed from those in the present action. There, the woman had completely relied on the man for support

for the more than twenty years that they had lived together in a marital type relationship and received numerous assurances over the years that he would take care of her for the rest of her life. The New Jersey Court, clearly moved by the fact that the woman was destitute, found that the long-term relationship and the services she had performed and the sacrifices she had made over those many years could support her palimony claim for support against Roccamonte's estate.

In the cases where courts have found enforceable oral agreements for support, the common thread has been that the party seeking relief has relied on the alleged agreement for a long period of time and has endured sacrifice in doing so. What gives rise to the contractual obligations is not simply that a relationship exists between the parties. It is not what they are presumed to have done because they were in a relationship. What matters is what the parties have actually done, and it is equity that requires the result.

The sole consideration for the second agreement in the instant case, if any, was the parties' relationship. By the rationale of the court of appeals, the only consideration required of Williams was that she reside in the subject premises and resume a relationship for an undetermined amount of time--one day of love and affection presumably would be sufficient. That stands in stark contrast to the significant, life-changing sacrifices of the plaintiffs in *Tiggelbeck* and *Roccamonte*.

To enforce a contract based on consideration so vague and ephemeral is basically to enforce a contract to make a gift in consideration of love and

affection. The rationale of the court of appeals' decision should not be the law in Ohio.

IV. **CONCLUSION**

WHEREFORE, this case presents issues of public or great general interest. As such, Ormsby respectfully requests this Court exercise its discretionary jurisdiction to review the propositions of law.

Respectfully submitted,

LARIBEE & HERTRICK, LLP

By: 

Michael L. Laribee #0066629

(Counsel of Record)

Chris D. Carey #0063307

Attorneys for Appellee

Frederick R. Ormsby

325 North Broadway Street

Medina, OH 44256

(330) 725-0531

mll@laribee-hertrick.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. mail, postage prepaid, to counsel for Appellant, L. Ray Jones, P.O. Box 592, Medina, OH 44258 on November 9, 2010.

LARIBEE & HERTRICK, LLP

By: 

Michael L. Laribee #0066629

(Counsel of Record)

Chris D. Carey #0063307

Attorneys for Appellee

Frederick R. Ormsby

COURT OF APPEALS

STATE OF OHIO)
COUNTY OF MEDINA)
AMBER WILLIAMS

Appellant

v.

FREDERICK ORMSBY

Appellee

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
10 SEP 30 AM 10:03

FILED
KATHY FORTNEY
MEDINA COUNTY No. 09CA0085-M
CLERK OF COURTS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 08CIV0869

DECISION AND JOURNAL ENTRY

Dated: September 30, 2010

MOORE, Judge.

{¶1} Appellant, Amber Williams, appeals from the judgment of the Medina County Court of Common Pleas. This Court reverses.

I.

{¶2} This matter centers around ownership of the home located at 3349 Hardwood Hollow in Medina, Ohio. Ms. Williams originally owned the property, subject to the mortgage, having received it as a result of a previous divorce. In May of 2004, Appellee, Fredrick Ormsby, moved into the property with Williams. The couple became engaged to be married in July of 2004 and Ormsby began making the mortgage payments. Later, Ormsby paid off the remaining mortgage balance of approximately \$310,000. In return, Williams executed a quit-claim deed granting to Ormsby full title to the property. On December 15, 2004, Ormsby recorded the deed.

{¶3} In January of 2005, Williams and Ormsby cancelled their wedding. In March of 2005, their engagement ended when law enforcement officers removed Williams from the property pursuant to a restraining order after she and Ormsby had a disagreement.

{¶4} On March 24, 2005, Williams and Ormsby executed a contract regarding the sale of the property and allocation of the resulting proceeds between them.

{¶5} In May of 2005, Williams and Ormsby made attempts to reconcile, including attending couples counseling. Williams refused to move back in with Ormsby unless he granted her an undivided one-half interest in the property.

{¶6} On June 2, 2005, Williams and Ormsby executed a second contract regarding the property. The contract made Williams and Ormsby "equal partners" in the property and included, among other things, a provision for disposition of the property in the event that their relationship ended. As a result, Williams moved back in with Ormsby and the parties eventually resumed their engagement.

{¶7} In September of 2007, Williams terminated the relationship. For a period of time, they continued to live in separate areas of the home. In April of 2008, Ormsby moved out.

{¶8} In May of 2008, Williams and Ormsby filed suit against each other in two separate actions. The trial court consolidated the cases. Williams sought specific performance of the June contract, or damages stemming from the breach of that contract. Ormsby's complaint does not appear in the record before this Court. On November 21, 2008, Williams filed a motion for summary judgment. On December 5, 2008, Ormsby filed a single motion for summary judgment/opposition to Williams' motion for summary judgment. On December 26, 2008, Williams first responded to the motion for summary judgment portion of Ormsby's filing and on January 2, 2009, filed a separate response to the opposition portion of Ormsby's filing. On April

16, 2009, the trial court granted Ormsby's motion for summary judgment on Williams' claims, reasoning that no consideration existed to support the June 2005 contract. The trial court ruled that the only issue remaining for trial was whether Ormsby was entitled to damages for any possible breach of the March 2005 contract, which the trial court held was supported by consideration. On April 22, 2009, the trial court issued a nunc pro tunc order correcting typographical errors regarding dates. On April 24, 2009, the trial court issued a second nunc pro tunc order correcting another issue related to dates. After subsequent amendments to the pleadings and attempted dismissals of various claims, on October 28, 2009, the trial court issued a judgment entry amending the second nunc pro tunc order to state that the summary judgment order was final and appealable, despite not disposing of all claims, and that there was no just reason for delay pursuant to Civ.R. 54(B).

{¶9} Williams timely filed a notice of appeal, and has raised two assignments of error.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED IN GRANTING A SUMMARY JUDGMENT TO [ORMSBY] BY FINDING THERE WAS NO CONSIDERATION FOR THE AGREEMENT ENTERED INTO BY THE PARTIES IN JUNE OF 2005.”

{¶10} In her first assignment of error, Williams contends that the trial court erred in granting summary judgment to Ormsby on the basis that no consideration supported the June 2005 agreement. We agree.

{¶11} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. We apply the same standard as the trial court, viewing the facts of the case in the light most favorable to the non-moving party and resolving

any doubt in favor of the non-moving party. *Viocck v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

{¶12} Pursuant to Civil Rule 56(C), summary judgment is proper if:

“(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.” *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

{¶13} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-93. Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). *Id.* Once this burden is satisfied, the non-moving party bears the burden of offering specific facts to show a genuine issue for trial. *Id.* at 293. The non-moving party may not rest upon the mere allegations and denials in the pleadings but instead must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. *Henkle v. Henkle* (1991), 75 Ohio App.3d 732, 735.

{¶14} In his motion for summary judgment/opposition to Williams’ motion for summary judgment, Ormsby contended that the agreement signed by the parties was not supported by consideration and was therefore unenforceable. Alternatively, he argued that the agreement was conditioned upon marriage and therefore the consideration failed because the relationship terminated prior to marriage.

Consideration

{¶15} In support of his contention that the agreement was not supported by consideration, Ormsby primarily relied upon *Carlisle v. T & R Excavating, Inc.* (1997), 123 Ohio App.3d 277. In *Carlisle*, this Court held that the relationship between a husband and wife cannot serve as consideration for a contract between them. *Id.* at 284, citing Restatement of the Law 2d, Contracts (1981), 173, Consideration, Section 71, Comment a (stating that “in consideration of love and affection” is insufficient to serve as consideration.) We also observed that R.C. 3103.06 prevents spouses from altering their legal relations with each other, with the exception of contracts involving immediate separation and support if they immediately begin living in separate residences. *Id.* at 285.

{¶16} “A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.” *Kostelnik v. Helper* (2002), 96 Ohio St.3d 1, 2002-Ohio-2985, at ¶16, quoting *Perlmutter Printing Co. v. Strome, Inc.* (N.D. Ohio 1976), 436 F.Supp. 409, 414.

“Without consideration, there can be no contract. Under Ohio law, consideration consists of either a benefit to the promisor or a detriment to the promisee. To constitute consideration, the benefit or detriment must be ‘bargained for.’ Something is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. The benefit or detriment does not need to be great. In fact, a benefit need not even be actual, as in the nature of a profit, or be as economically valuable as whatever the promisor promises in exchange for the benefit; it need only be something regarded by the promisor as beneficial enough to induce his promise.” (Internal citations omitted.) *Carlisle v. T. & R. Excavating, Inc.*, 123 Ohio App.3d at 283.

{¶17} In arguing that Williams provided no consideration, Ormsby referred to Williams’ deposition testimony. She acknowledged that she did not provide any money, personal property,

or anything tangible in consideration for the June agreement. However, pursuant to *Carlisle*, she was not required to do so. Further, Ormsby ignored the rest of Williams' answer regarding whether he received anything of value in return. She stated that "I thought what was of value was the fact that we were sharing all sorts of things. He had my love. He had – **I shared my assets with him, too. We were living together as a couple.**" (Emphasis added.) Ormsby's counsel engaged Williams in the following exchange:

"Q. So, in essence, the consideration was that you were going to resume your relationship and go forward?

"A. And move forward with our relationship, yes."

{¶18} Ormsby acknowledged that he and Williams resumed their engagement and she moved back into the house. Ormsby, however, also noted in his affidavit attached to his motion/response that Williams refused to move back in with him or resume their relationship unless she had an undivided one-half interest in the real property. Williams, in the motion to which Ormsby was responding, also identified Ormsby's deposition testimony that he was not threatened or blackmailed into signing the June agreement. Rather, "she refused to move back into the house unless I gave her, you know – unless she were [sic] given equity in the house. So that was her condition."

{¶19} Under the facts of this case, we conclude that moving into a home with another and resuming a relationship can constitute consideration sufficient to support a contract. This matter is factually distinguishable from *Carlisle*, supra, in that *Carlisle* involved three separate, informal documents, not all of which were signed, and none of which specifically referred to consideration. In this case, both parties signed a formal contract that specifically acknowledges the existence of "valuable consideration that is mutually agreed upon." This matter is further distinguishable from *Carlisle* in that Williams and Ormsby were not married at the time of

contract formation. There are obvious public policy considerations that would discourage finding various forms of benefit or detriment within a marital union to constitute consideration for a legal contract. Here the parties were not married, but were attempting to work through differences related to their personal relationship. The concept of considering personal relations in the context of contracts, however, is not foreign to Ohio jurisprudence. Ohio law recognizes a contract to make a will. See, e.g., *Snyder v. Warde* (1949), 151 Ohio St. 426. Such a contract, however, requires more than “ordinary services” susceptible to valuation. *Id.* at paragraph four of the syllabus. Instead, the services “must be of a kind which are rendered as a result of sacrifice by the one performing them, generally being rendered because of love and affection.” *Id.* at 438. While we recognize that Williams’ decision to move back in with and resume the relationship with Ormsby was not without reciprocal benefits beyond gaining partial title to the residence, we also recognize that romantic relationships typically involve some sacrifice by each partner. Consideration consists of either a benefit to the promisor or a detriment to the promisee. Whether the bargained-for detriment is equivalent to the benefit received is not determinative of the existence of consideration; it need only be something regarded by the promisor as beneficial enough to induce his promise. *Carlisle*, *supra*, at 283. Moreover, “companionship” has been recognized in case law as valid consideration. *Tiggelbeck v. Russell* (1949), 187 Or. 554, 568, 213 P.2d 156 (“[The services] consisted *** of the giving of society, companionship and affection[.] *** These things are, we think, of the nature of the companionship and social relationships *** found in every home[.]” (Quotations and citations omitted.)) The Supreme Court of New Jersey in, *In re Estate of Roccamonte* (2002), 174 N.J. 381, 808 A.2d 838, considered whether a promise of support for life is enforceable against the promisor’s estate. Arthur Roccamonte and Mary Sopko cohabited with each other while each

was married. Eventually Mary terminated the relationship and moved to California. *Id.* at 386. Roccamonte sought her return and telephoned her repeatedly. *Id.* He promised that if she returned, he would divorce his wife and provide for Sopko for the rest of her life. *Id.* Relying on their agreement, Sopko returned and resumed the relationship, divorced her husband and lived with Roccamonte in a marital-type relationship. *Id.* The couple did not marry but cohabited until Roccamonte's death. *Id.* Roccamonte died intestate and Sopko sued his estate for palimony. *Id.* at 387. In concluding that there was sufficient consideration to support Roccamonte's promise, the *Roccamonte* Court held that:

“the undertaking of a way of life in which two people commit to each other, foregoing other liaisons and opportunities, doing for each other whatever each is capable of doing, providing companionship, and fulfilling each other's needs, financial, emotional, physical, and social, as best as they are able. And each couple defines its way of life and each partner's expected contribution to it in its own way. Whatever other consideration may be involved, the entry into such a relationship and then conducting oneself in accordance with its unique character is consideration in full measure.” *Id.* at 392-93.

{¶20} Ormsby, although he attempted to do otherwise, directed the court to Williams' testimony establishing consideration in that she shared her assets with him and resumed living together as a couple. As in *Roccamonte*, by resuming the relationship, Williams agreed to undertake a way of life which entailed among other things “providing companionship, and fulfilling each other's needs, financial, emotional, physical, and social, as best as [she was] able,” as well as foregoing other romantic possibilities, *Id.* These are not “ordinary services” susceptible to valuation. *Snyder*, 151 Ohio St. at paragraph four of the syllabus. Thus, the services would constitute consideration for a contract to make a will. We see no reason why they do not constitute consideration for this contract.

{¶21} Ormsby's contention that the consideration was not bargained for is also unavailing because Williams directed the trial court to his testimony that she ended the

relationship, vacated the residence and refused to move back into the house unless she received a one-half interest in the property. Ormsby's affidavit confirms his deposition testimony. Therefore, the contract was supported by bargained-for consideration.

Contract Conditioned upon Marriage

{¶22} Although the trial court did not directly address Ormsby's contention that even if consideration exists, the equity in the property was conditioned upon marriage, "[w]e are nevertheless required to affirm the trial court's judgment if any valid grounds are found on appeal to support it." *McKay v. Cutlip* (1992), 80 Ohio App.3d 487, 491, citing *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96. Therefore, we consider this issue. Ormsby's argument is not well taken. While the evidence and the language of the contract indicate that the parties did intend to be married, Ormsby failed to direct the trial court to any contractual provision creating a *condition*. In support of his argument, Ormsby cites to, among others, *Zsigmond v. Vandenberg* (Dec. 29, 1995), 11th Dist. No. 95-P-0006, which held that gifts conditioned upon marriage must be returned if the marriage does not occur. Putting aside for the moment the inapplicability of the case law cited by Ormsby regarding contracts conditioned on marriage, the June 2005 contract does not contain any language that can be construed as a condition. Instead, the contract contains only a statement in the recital section that "[ORMSBY] and [WILLIAMS] plan be [sic] married and to reside in the HOUSE." This statement is part of a larger paragraph, which indicates that on December 15, 2004, Ormsby paid off the remainder of the mortgage. Additionally, the contract has a provision addressing the possibility "that the *relationship* between [WILLIAMS] and [ORMSBY] would end[.]" (Emphasis added.) Should the *relationship* end, the parties agreed that if Ormsby elected to keep the house, he would pay Williams her share of the appraised value of the house at that time. Had the contract been

conditioned upon marriage, the parties could have used the term “marriage” rather than “relationship.” Accordingly, we disagree that the contract was conditioned upon marriage.

{¶23} Because the contract was supported by consideration and the contract was not conditioned upon marriage, the trial court erred in granting summary judgment to Ormsby. Williams’ first assignment of error is sustained.

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED IN NOT GRANTING [WILLIAMS’] MOTION FOR SUMMARY JUDGMENT.”

{¶24} In her second assignment of error, Williams contends that the trial court erred in failing to grant summary judgment in her favor. Having first determined that the trial court erred in granting summary judgment to Ormsby, we must now address whether the trial court erred in failing to grant Williams’ motion for summary judgment.

{¶25} In this case, the trial court immediately reached the conclusion that the June contract was unsupported by consideration flowing from Williams. This conclusion was erroneous, as we explained above. Therefore, the trial court never reached a full consideration of Williams’ motion and we decline to decide the issue for the first time on appeal. See *Bergey v. HSBC Bank USA*, 9th Dist. No. 24986, 2010-Ohio-2736, at ¶22.

III.

{¶26} Williams’ first assignment of error is sustained. We decline to address Williams’ second assignment of error. We reverse the judgment of the Medina County Court of Common Pleas granting summary judgment in favor of Ormsby and remand the cause to the trial court for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.



CARLA MOORE
FOR THE COURT

WHITMORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

L. RAY JONES, Attorney at Law, for Appellant.

MICHAEL L. LARIBEE, Attorney at Law, for Appellee.