

IN THE SUPREME COURT OF OHIO

AMBER WILLIAMS)	CASE NO. 2010-1946
)	
Appellee,)	
)	On Appeal From The
Vs.)	Ninth Appellate District, Medina
)	County, Ohio
)	
)	
FREDERICK ORMSBY)	
)	
Appellant.)	

REPLY BRIEF OF APPELLANT FREDERICK ORMSBY

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INTRODUCTION

In this case, the court of appeals improperly reversed a trial court's grant of summary judgment in a contract dispute based on a lack of valid consideration. The court of appeals 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." *Williams v. Ormsby* (September 30, 2010) Medina App. No. 09CA0085-M, ¶19. This is a sharp departure from well-settled Ohio law that a romantic relationship cannot serve as valid consideration for a contract.

Remarkably, Appellee Amber Williams (hereinafter referred to as "Williams") never addresses the holding of the court of appeals in her merit brief. Further, Williams does not contest Ormsby's proposition of law or refute the body of law which is contrary to the court of appeal's decision. Indeed, the very few statements made by Williams regarding contract consideration do not support the holding of the court of appeals.

LAW AND ARGUMENT

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

In the case at bar, the trial court correctly determined that the March 2005 agreement between Williams and Ormsby was a valid contract, supported by mutual

consideration. The March agreement described their interests in the subject property and their responsibilities for the expenses associated with ownership. The trial court correctly found that the June 2005 document, which not only granted Williams a substantial interest in the property but also purported to relieve Williams of every obligation she had under the March agreement, was not a valid contract because there was no consideration for the changes. The June document amounted to a failed novation of this earlier contract. For it to be considered an enforceable contract, the June document must also be supported by valid consideration. See *Moneywatch Cos. v. Wilbers* (1995), 106 Ohio App.3d 122, 125.

In her merit brief, Williams focuses almost exclusively on a single argument: that since the June document was in writing, it satisfies the Statute of Frauds (R.C. 1335.04). Williams writes, "Lawyers should always say, GET IT IN WRITING. (emphasis in original)" Appellee Merit Brief, p. 9. The fact that the June document is in writing is not in dispute. The dispute lies with the court of appeals' attempt to carve out an exception to well settled Ohio law regarding consideration. Williams completely ignores the holding of the court of appeals and fails to argue against Ormsby's proposition of law.

Williams' argument that the June document must be binding and enforceable simply because it is in writing ignores the basic principles of contract law. "A contract must 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, ¶16. Parties can put anything in writing, but doing so does not necessarily create a legally

binding contract. The object of a purported contract must not be illegal or against public policy such as an agreement for prostitution; or, an agreement may be unenforceable for lack of legal consideration even though it is reduced to writing, as in the case at bar.

Williams' specific discussion of consideration is quite limited and does not support the court of appeals' holding. As discussed more thoroughly in Ormsby's merit brief, the June document is absolutely silent as to the consideration offered by Williams in support of the changes to the March contract. Nevertheless in pleadings and affidavits, she has asserted a number of after-the-fact explanations for what the consideration had been.

She states that both parties "put money into the house **after** the June 2005 document (emphasis added)." Appellee Merit Brief, p. 2. These payments by Williams, if any, simply cannot serve as consideration for the June document which provides that Ormsby alone must pay all property expenses. Appellant Supp. 9. It is important to note that the March agreement required both parties to share the cost of all major improvements and the costs necessary to operate and maintain the house as long as they both lived there. Moreover, the March agreement required Williams to pay painting costs up to \$4,625.54, roofing repairs of \$3,475.00, and all real estate taxes if the house was not sold by June 1, 2005. Appellant Supp. 8. The June document purports to relieve Williams of all these obligations.

Further, Williams' argument contradicts her assertion that the June document creates a present tense interest in the property. Appellee Merit Brief, p. 5. She states the June document "is in present tense that the parties are equal in the same (ownership of the property)" and "the rights and obligations in the real property sprang into being June 2,

2005.” Id. at p. 3 and 5 respectively. Williams provides no legal authority supporting the theory that the parties’ voluntary and gratuitous acts following the formation of a contract may serve as a consideration when the parties’ interests and obligations were already established in a prior contract.

Williams next argues that the parties agreed to share in future insurance benefits, if any, and summarily argues this “shows mutual consideration back and forth.” Id. at p. 5. Williams, though, utterly fails to identify what legal consideration she gave to Ormsby. Indeed, the March agreement already required Ormsby to maintain insurance on the property. Further, the June document does not set forth how any insurance proceeds would be divided.

Williams then argues that she provided consideration for the June document by sharing her assets and caring for Ormsby. The June document, however, contains none of these terms. Again, she fails to identify any authority for the proposition that gratuitous acts following the formation of a contract may serve as consideration.

She also states that the parties shared “all household duties, including a bed.” Id. at p. 6. Again, the document at issue contains no such provisions. Williams fails to cite legal support for the fact that doing one’s own household chores can serve as legal consideration for a contract. Indeed, the March 2005 agreement provided that the parties would share the maintenance of the house as long as they both lived there. More troubling is Williams’ suggestion that sleeping together in a sexual context may serve as legal consideration to support a contract. To the extent that consideration is illegal or violative of public policy, the contract would be void. See *Roll v. Raquet* (1831), 4 Ohio 400, 1831

WL 23 (Ohio).

With the exception of a cursory discussion of *Snyder v. Warde* (1949) 151 Ohio St. 426, Williams fails to address the case law cited by the court of appeals to support its holding. Williams does not disagree that for more than a century, Ohio law has refused to recognize love and affection as consideration for a contract. *Flanders v. Blandy* (1887), 45 Ohio St. 108, 114. She does not dispute the holding of *Carlisle v. T & R Excavating, Inc.*, (1997), 123 Ohio App.3d 277, 704 N.E.2d 39, Ohio App. 9th Dist., 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. Williams does not dispute that 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 App. 12th Dist. She does not disagree that amatory causes of action were abolished in Ohio 1978 through R.C. 2305.29 and that common law marriages were prohibited in Ohio by statutory amendment after October 10, 1991. R.C. 3105.12(B)(1)(2). Williams does not dispute that the palimony cases used by the court of appeals shed little light on Ohio contract law.

Williams argues that Ormsby’s analysis of *Snyder* is flawed, suggesting that the *Snyder* Court’s decision would have been different had the agreement been in writing. Williams is correct that *Snyder* is a statute of frauds case and that a written agreement between the parties may have changed the outcome. Her analysis, though, misses the

point. The housekeeper in *Snyder* alleged ample consideration to support a written contract. She performed a lengthy list of diverse services for her former employer: cooking, cleaning, canning, laundry, secretarial work, business errands, and serving as his driver. The *Snyder* Court concluded all of these were services ordinarily compensable in money. *Snyder* at 426. *Snyder* stands for the proposition that providing ordinary services compensable in money will not take an oral contract to make a will out of the statute of frauds. *Id.* at paragraphs two and three of the syllabus. However, there is nothing in *Snyder* that states that a relationship, romantic or otherwise, may serve as consideration for a contract.

Williams also incorrectly interprets the case of *Emery v. Darling* (1893) 50 Ohio St.160. *Emery* is distinguishable from the case at bar in several ways. First, *Emory* involves a contract to make a will. One sister covenanted in writing with another that, if the latter would reside with her as long as she desired, she would give to her all of her property. Ohio Revised Code §2107.04 provides the following in full:

No agreement to make a will or to make a devise or bequest by will shall be enforceable unless it is in writing. Such agreement must be signed by the maker or by some other person at such maker's express direction. If signed by a person other than such maker, the instrument must be subscribed by two or more competent witnesses who heard such maker acknowledge that it was signed at his direction.

Simply, R.C. 2107.04 requires that a contract to make a will be in a signed writing, but there is no requirement that the consideration be of a specific nature. See also *Snyder* at paragraph one of the syllabus.

Second, the sisters' "relationship" in *Emery* was not the consideration for the

agreement. The two were already sisters; that relationship was already formed years before the agreement was even contemplated. The *Emery* Court found that sufficient consideration was given by one sister remaining with the other until her death several years later. Promissory estoppel was appropriate under these circumstances as the agreement was actually and fully performed. Unlike the court of appeals in the case at bar, the *Emery* Court did not have to supply evidence regarding the sisters' relationship which was not in the record.

In the case at bar, the court of appeals stretches to hold that the resumption of a relationship can serve as legally sufficient consideration to support an enforceable contract. A term like "relationship" is not an interchangeable substitute for actual services, duties or sacrifices. To presume that the mere existence of a relationship automatically entails mutual sacrifice and services is an idealistic leap of logic.

The actual document at issue does not mention any consideration promised by Williams. The June 2005 document states that she has "inhabited" the house since 1997. It states that Williams and Ormsby plan to be married and reside there. Apart from stating that Ormsby will pay all of the expenses for the property, the document makes no mention of fulfilling each other's needs, financial, emotional, physical, social, or otherwise. The court of appeals assumed, with neither supporting language in the document nor evidence in the record, that "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 she was able as well as foregoing other romantic possibilities." *Williams v. Ormsby* (September 30, 2010) Medina App.

No. 09CA0085-M, ¶20. Those terms have been supplied by the reviewing court.

The sole consideration for the second document in the instant case, if any, was the parties' relationship. Williams admits that she did not give Ormsby money, personal property, or anything tangible in consideration for changing the terms of the March agreement. Appellant Supp. 70; Williams Depo. at p. 51, lines 22-25. According to her own testimony, the only consideration given by her in exchange for a one-half interest in the property was resuming the parties' relationship. Id.

By the rationale of the court of appeals, Williams need only reside in the subject premises and resume a "relationship" with Ormsby for an undetermined amount of time to obtain a significant interest in real property. By this theory, one day of love and affection is worth approximately one hundred sixty-two thousand dollars.

CONCLUSION

This case was decided correctly at the trial court. The parties were bound by the terms of the March 2005 agreement. The June 2005 document, which purports to alter their rights and obligations, was not supported by consideration. In reversing that decision, the court of appeals not only reached the wrong result, but did so in a way that sets a dangerous precedent and takes well-settled contract law down a new road in Ohio. Binding parties to promises based on their cohabitation resembles palimony, a cause of action that this state has declined to acknowledge. To enforce a contract based on consideration as vague as resuming a relationship 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. The decision below must be reversed, and the

judgment of the trial court affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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