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FIRST DIVISION
June 27, 2011

No. 1-10-1044

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
COURTNEY M. MORRIS,)	Circuit Court of
)	Cook County.
Petitioner-Counter-Respondent-)	
Appellant,)	
)	
and)	No. 07 D2 30411
)	
PAUL W. SCHMIDT,)	
)	The Honorable
Respondent-Counter-Petitioner-)	Grace G. Dickler,
Appellee.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concurred in the judgment.

O R D E R

HELD: The doctrine of *laches* prohibited the applicability of a section of the parties' premarital agreement involving tax liability because the parties voluntarily acted contrary to the agreement during their 10-year marriage.

Petitioner, Courtney Morris, appeals the trial court's order refusing to enforce an income tax provision in the parties' premarital agreement based on the doctrine of *laches*. Petitioner

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contends the trial court abused its discretion where the manifest weight of the evidence demonstrated that the provision should be applied. Based on the following, we affirm.

FACTS

Petitioner and respondent, Paul Schmidt, were married on July 12, 1997. Petitioner filed a petition for the dissolution of marriage on August 16, 2007. Respondent filed a counter-petition for the dissolution of the parties' marriage on September 18, 2007. Prior to their marriage, on July 11, 1997, the parties entered into a premarital agreement. On October 15, 2008, in response to petitioner's petition for declaratory judgment as to the validity of the premarital agreement, the trial court entered an agreed order finding the premarital agreement was valid, binding and enforceable.

The issue before this court concerns one paragraph of the premarital agreement. In particular, paragraph 1.6 provides:

"Tax Obligations. The parties may file joint federal and state income tax returns for each calendar year for which filing such joint returns will result in less aggregate federal and state income taxes than would result from their filing separate returns; however, either party may opt out of this filing arrangement. The federal income tax liability due with

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respect to any such joint returns shall be allocated between the parties, and paid by each of them out of his or her separate property in such a manner that the amount paid by each of them will bear the same ratio to the total tax payable with respect to such joint return as the amount of tax which would be payable by him or her if he or she filed a separate return bears to the total tax which would be payable by both parties if they filed separate returns. Any additional assessments or costs of taxation resulting from audit or other adjustment shall be allocated between the parties hereto as heretofore provided in this paragraph. Each of the parties hereto may, but shall not be obligated to join in gifts made by the other party for purpose of reporting federal gift taxes."

The parties filed joint tax returns from 1997 to 2007.

Petitioner filed an amended motion for summary judgment regarding the relevant tax paragraph from the premarital agreement. In the motion, petitioner said she and respondent both admitted they never discussed the premarital agreement or how their tax liability should be calculated, and neither told their accountant about the tax provision in the premarital agreement nor how to prepare their tax liability.

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In response, respondent argued that a material issue of fact existed regarding why the parties voluntarily ignored the tax allocation procedures provided in paragraph 1.6 of their premarital agreement. Respondent added that petitioner was attempting to retroactively "undue" the parties' voluntary tax payments since 1997.

Petitioner and respondent each hired experts to analyze paragraph 1.6, and both experts concluded that, at one time or another, each party overpaid their taxes.

The trial court denied petitioner's amended motion for summary judgment.

At trial, Jeffrey Hackney, the parties' accountant, testified that he had prepared the parties' tax returns since 1997. Prior to that, Hackney prepared petitioner's individual tax returns since 1984 and had been employed by petitioner's family "since probably the '60s or '70s."

Hackney met with respondent annually to exchange tax-related documents. Hackney was unaware, up until the day of trial, that the parties had entered a premarital agreement. Neither party ever requested that Hackney use a specific methodology to prepare their taxes. According to Hackney, he prepared the parties' joint tax returns to allow them to claim the highest number of tax benefits in order to have the lowest tax burden. To do so,

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Hackney relied on respondent's W-2 forms and both parties' investment account information. Petitioner's income was garnered through investments. Hackney calculated each parties' tax liability according to their share of the taxable income.

Hackney testified that the methodology provided in the premarital agreement required a completely different calculation, one which required a "separate tax calculation for each of the parties if they were married filing separately." The alternate preparation would have resulted in one spouse having a lower effective tax rate and, therefore, a different allocation of tax liability because there was a difference in tax rates for earned income compared to passive investment income. Hackney noted that "[i]n the '90s there wasn't much difference in the [taxable] rates. It really became apparent in 2001 when the tax bill, in 2001, dropped the investment rates from 35 percent for dividends to 15; and for capital gains, from 20 to 15. So in the '90s, there really wasn't much of a difference [between the taxable rates for earned and passive income]."

Respondent testified that he and petitioner decided to use petitioner's accountant because her tax returns were complex. Respondent collected the relevant tax documents annually and reviewed them with petitioner prior to bringing them to Hackney. Respondent testified that he and petitioner both met with Hackney

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to exchange the tax-related documents in the first three to four years of their marriage, but respondent met with Hackney alone for the remainder of the marriage. Respondent said both he and petitioner had been married twice prior to their marriage. According to respondent, he and petitioner never discussed preparing their joint tax returns in compliance with the premarital agreement. Respondent never referenced the premarital agreement and never instructed Hackney to prepare their taxes in compliance therewith. Respondent never even informed Hackney of the existence of the premarital agreement. Respondent relied on Hackney's calculations to determine each parties' tax liability.

Respondent testified that both parties retained expert witnesses to ascertain the parties' tax liability in compliance with paragraph 1.6 of the premarital agreement. Both of the experts agreed respondent would owe petitioner money according to the methodology prescribed by paragraph 1.6; however, the experts disagreed as to how much was owed petitioner. Respondent's expert informed him that he owed petitioner \$77,249 for the tax years of 1997 through 2007.

Petitioner testified that the parties never discussed the premarital agreement once they were married. Petitioner acknowledged that the premarital agreement was drafted "at her behest by her attorney." Petitioner testified that she never

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told Hackney about the parties' premarital agreement and never instructed Hackney to prepare the parties' taxes in accordance therewith. Petitioner recalled meeting with Hackney once during the parties' marriage. In 2008, after instituting divorce proceedings, petitioner learned through her attorney that, according to the premarital agreement, she may have overpaid taxes. After reviewing the parties' taxes from 2002 until 2007, petitioner's expert concluded that respondent owed petitioner \$112,302.11 if the parties were to follow paragraph 1.6 of the premarital agreement.

Petitioner's counsel argued that there was no waiver or estoppel of enforcement of the premarital agreement and the doctrine of *laches* was not applicable. In opposition, respondent's counsel argued that petitioner was attempting to undo a series of voluntary acts and should be estopped from doing so because the agreement allowed the parties to opt out of filing joint tax returns.

On October 9, 2009, the trial court issued an oral ruling ultimately denying petitioner's request to "re-open the taxable years dating back to 1997." Noting that the language of paragraph 1.6 of the premarital agreement was "somewhat convoluted," the trial court focused on the language providing that "[t]he federal tax liability due, with respect to such

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return, shall be allocated between the parties in such a manner that the amount paid by each of them will bear the same ratio to the total tax payable by him or her if she filed a separate return." Based on that language, the trial court concluded that the premarital agreement "intended that the person who generated their specific income pay at their specific tax rate."

In support of its conclusion that petitioner's request for compensation of tax liability overpayment was untimely, the court said:

"First, the Premarital Agreement was drafted by [petitioner's] attorney. Presumptively, she was advised as to the contents of said agreement.

Further, this was [petitioner's] third marriage. Although there is no evidence in the record that a Premarital Agreement was executed for any of her other marriages, this court can assume that [petitioner] was savvy with regard to the meaning and import of a Premarital Agreement. [Petitioner's assets totaled in excess of \$5 million at the time.]

Further, it was [petitioner's] accountant that prepared the returns. This was not a situation where [petitioner] had no input. She chose the accountant. Clearly, she could have advised him of the existence of

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the Premarital Agreement. It is also significant that for some years [respondent] was the one that overpaid. This court is certain that [petitioner] would not be seeking to enforce the agreement had the change in the tax law not proven to be to her advantage.

Most compelling, however, is the fact that throughout the marriage, although fully aware of the existence of the premarital agreement, the parties chose not to abide by its terms. Neither party should now be allowed to re-open events that occurred beginning more than a decade ago. Both parties are sophisticated. Had they desired to abide by the terms of the Premarital Agreement during their marriage, this court finds that they would have done so."

The trial court entered a written order on December 1, 2009, memorializing its oral ruling.

Petitioner filed a motion to reconsider, arguing that the trial court's findings of fact were incorrect and that it erred in finding the enforcement of the premarital agreement was waived by conduct. Respondent responded that the issue did not involve waiver but, rather, that petitioner was estopped from requesting reimbursement of tax overpayments.

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On March 11, 2010, a hearing was held on the motion to reconsider. Petitioner argued that waiver was not applicable because there was no unequivocal statement that the contract provision was being waived and that the elements of estoppel did not exist. When asked by the trial court about the doctrine of *laches*, petitioner replied that there was no requisite conscious act to delay enforcement of paragraph 1.6; therefore, the doctrine did not apply. In response, respondent argued that waiver and estoppel both applied to the case because the parties were free to file their taxes separately, yet petitioner voluntarily chose to file jointly.

The trial court denied the motion to reconsider, clarifying that its basis for denying petitioner's request for reimbursement was based on the doctrine of *laches*. The trial court explained:

"[A]s noted in the original decision, the petitioner wishes to reopen an issue that goes back more than a decade. Although *laches* does require a knowing action, there was, as I stated when we were discussing in argument, a requirement that each and every year this petitioner sign a [tax] return. Could we draw an inference that she was knowingly signing a return? How far does 'knowing' have to go? Does she specifically have to say I know that this provision was

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in the premarital agreement, I'm waiving it? Does the signing of the return in and of itself—is that a sufficient waiver, is that sufficient knowledge?

I guess *** that would be for the Appellate Court to determine, but I find that now, going back more than a decade on something that the petitioner reaffirmed each and every year, she did sit on her rights, number one. This is a different situation than a determination at the filing of a dissolution of marriage whether a property is marital or non-marital. That only becomes ripe upon filing of the petition for dissolution. The issue here of how the tax should be allocated arose each and every year ***.

I also feel that there is a detriment to the respondent herein. The respondent now would be obligated to come up with an extraordinarily large sum of money, somewhere between 72,000 and a hundred and some thousand, depending on who is believed, and I feel that that does result in undue prejudice to the respondent and accordingly the motion to reconsider is denied."

This appeal followed.

DECISION

Plaintiff contends the trial court abused its discretion where it refused to enforce paragraph 1.6 of the parties'

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premarital agreement based on the doctrine of *laches*, contrary to the manifest weight of the evidence.

The supreme court, in *Tully v. State*, 143 Ill. 2d 425, 432, 574 N.E.2d 659 (1991), defined the doctrine of *laches* as follows:

"*Laches* is an equitable doctrine which precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party. [Citation.] The doctrine is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party. [Citation.] Two elements are necessary to a finding of *laches*: (1) lack of diligence by the party asserting the claim and (2) prejudice to the opposing party resulting from the delay [Citation.]"

Id.

The applicability of the doctrine depends of the facts of the case. *Id.*

Whether the doctrine of *laches* applies is left to the sound discretion of the trial court and will not be disturbed on review unless it is "'clearly wrong.'" *Lozman v. Putnam*, 379 Ill. App. 3d 807, 822, 884 N.E.2d 756 (2008) (quoting *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074, 608 N.E.2d 396 (1992)).

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We will find an abuse of discretion only where the trial court's decision was "'palpably erroneous, contrary to the manifest weight of the evidence, or manifestly unjust.'" *Lozman*, 379 Ill. App. 3d at 822 (quoting *O'Brien v. Meyer*, 281 Ill. App. 3d 832, 835, 666 N.E.2d 726 (1996)).

To demonstrate an unreasonable delay, the facts must establish that plaintiff failed to seek redress promptly after having knowledge upon which the claim is based. *Lozman*, 379 Ill. App. 3d at 822. The mere lapse of time from the accrual of the claim to it being raised is insufficient to establish *laches*. *Madigan v. Yballe*, 397 Ill. App. 3d 481, 493, 920 N.E.2d 1112 (2009). However, a plaintiff "'need not have actual knowledge of the specific facts upon which the claim is based if he fails to ascertain the truth through readily available channels and the circumstances are such that a reasonable person would make inquiry concerning these facts.'" *Lozman*, 379 Ill. App. 3d at 822 (quoting *Eckberg v. Benso*, 182 Ill. App. 3d 126, 132, 537 N.E.2d 967 (1989)).

We conclude the evidence supported the trial court's finding that petitioner's lack of diligence in raising her contention for over 10 years after repeatedly and voluntarily filing joint tax returns in contravention of paragraph 1.6 of the premarital agreement barred her claim pursuant to the doctrine of *laches*.

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The trial court's finding was not an abuse of discretion. We recognize that both parties testified they forgot about the premarital agreement after having signed it in 1997; however, we find that a reasonable person would have recalled entering into an agreement that specifically referenced tax liability when undergoing the annual activity of filing tax returns. Petitioner testified at trial that, at one point in the 10 years at issue, she questioned the high rate of her tax liability. Petitioner testified that her questions created tension between the parties and she, therefore, dismissed her inquiry. We find, however, that a reasonable person who doubted her tax exposure would have attempted to learn her true tax liability by recalling the fact that the parties had entered an agreement resolving the issue prior to being married. Petitioner's age, prior marital experience and level of wealth make it implausible that she would not attempt to limit her tax exposure, which she had by entering into the premarital agreement with an express provision establishing the parties' tax liability. The fact that petitioner chose to disregard the terms of the premarital agreement does not undermine the element of unreasonable delay especially where, contrary to petitioner's argument, there is no need to establish that the delay was deliberate or intentional.

Petitioner argues that, if we find unreasonable delay,

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respondent cannot establish prejudice where he has benefitted from controlling funds not belonging to him for over 10 years. The second element of *laches* requires a demonstration that petitioner's unreasonable delay in asserting the claim "has prejudiced and misled the [respondent], or caused him to pursue a course different from what he would have otherwise taken."

People ex rel. Casey v. Health & Hospitals Governing Commission, 69 Ill. 2d 108, 115, 370 N.E.2d 499 (1977). Moreover, the "lack of diligence must result in some inequity to the adverse party such that it would be unfair and unjust to allow the belated assertion of the claim." *Nancy's Home of the Stuffed Pizza, Inc. v. Cirrincione*, 144 Ill. App. 3d 934, 940-41, 494 N.E.2d 795 (1986).

We conclude that the facts satisfy the second element of *laches*. The success of petitioner's claim would result in respondent being responsible to pay her at least \$77,000, based on the parties' experts. Petitioner's argument that prejudice cannot be found where respondent is being asked to "belatedly pay that which was an enforceable obligation" is disingenuous. Year after year, respondent relied on the fact that petitioner chose to file joint tax returns. Respondent's tax obligations were satisfied accordingly, in conjunction with the method provided by their accountant. On an annual basis, the parties reviewed the

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necessary tax documentation prior to respondent meeting with the accountant, and petitioner consistently signed the necessary documents, reflecting her desire to file jointly. For over 10 years, respondent relied on petitioner to dispense his tax obligations. Respondent would most certainly be prejudiced if he was exposed to new tax liabilities for the years the parties were married.

We recognize that, pursuant to section 9 of the Illinois Uniform Premarital Agreement Act (Act) (750 ILCS 10/9 (West 2006)), petitioner was unable to institute a lawsuit to enforce the terms of the premarital agreement until the parties' divorce proceedings; however, that fact does not excuse petitioner's repeated and voluntary decision to file a joint tax return annually over the course of the 10-year marriage. Rather, the statute expressly provides that "equitable defenses limiting the time for enforcement [of a claim for relief under a premarital agreement], including laches and estoppel, are available to either party." 750 ILCS 10/9 (West 2006). Respondent was, therefore, within his rights to raise the affirmative defense of *laches*. We note that respondent did not, in fact, raise the doctrine of *laches*, but he did raise the affirmative defense of estoppel. Moreover, petitioner argued at trial that the doctrine of *laches* did not apply to the case at bar. Petitioner,

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therefore, cannot claim that she suffered any sort of prejudice by not having an opportunity to respond to the *laches* defense. In addition, petitioner does not cite any cases providing that a trial court may not *sua sponte* consider the affirmative defense of *laches* where estoppel was raised and the waiver doctrine was argued. See Ill. S. Ct. R. 341(h)(7).

CONCLUSION

We affirm the trial court's refusal to apply paragraph 1.6 of the parties premarital agreement on the basis of the doctrine of *laches*.

Affirmed.