

NOTICE

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2015 IL App (4th) 140661-U

NO. 4-14-0661

FILED

April 9, 2015

Carla Bender

4th District Appellate Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of FLOYD G.)	Appeal from
ISRINGHAUSEN, Deceased,)	Circuit Court of
MARY JANE ISRINGHAUSEN,)	Jersey County
Petitioner-Appellant,)	No. 09P2
v.)	
BRUCE ISRINGHAUSEN, SUSAN ISRINGHAUSEN,)	Honorable
GARY ISRINGHAUSEN, and JUDY KUEBRICH,)	Eric S. Pistorius,
Respondents-Appellees.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted the respondents' motions to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)).
- ¶ 2 In March 2014, petitioner, Mary Jane Isringhausen (Jane), filed a first amended complaint asserting claims against respondents, the estate of her former husband, Floyd G. Isringhausen (Estate), and Floyd's children. Jane, who entered into an antenuptial agreement before marrying Floyd in 1981, sought funds Floyd gave to his children before his 2008 death. Jane maintained Floyd improperly distributed money to his children that belonged to her under the "after acquired property" provision in the antenuptial agreement.
- ¶ 3 In April 2014, respondents moved to dismiss Jane's first amended complaint under sections 2-615 (735 ILCS 5/2-615 (West 2012)) and 2-619 (735 ILCS 5/2-619 (West

2012)) of the Code of Civil Procedure. Respondents argued, under the terms of the antenuptial agreement, the funds were Floyd's as they were proceeds from the farms he owned before he married Jane. Respondents also argued Jane's new claims were untimely as they did not relate back to her 2009 claim against the estate.

¶ 4 The trial court agreed with respondents and granted the motions to dismiss. Jane appeals, arguing (1) this court, in her first appeal, found the term "after acquired property" ambiguous and the trial court failed to permit discovery to define the term before granting the section 2-615 motion to dismiss; and (2) her claims were timely filed. We affirm.

¶ 5 I. BACKGROUND

¶ 6 This is the third appeal involving these parties over the estate of Floyd Isringhausen. Floyd, at age 59, and Jane, at age 51, married in September 1981. Both had adult children from previous marriages. Floyd was a farmer, owning and operating three farms. Jane had a master's degree in library sciences and worked as a director of libraries for the Jerseyville school system. *In re Estate of Isringhausen*, 2011 IL App (4th) 100811-U, ¶ 4 (*Isringhausen I*). The two entered an antenuptial agreement before their wedding. Floyd desired to pass the farmland to his five children. *Id.* ¶¶ 4-5. Floyd died in 2008. *Id.* ¶ 14.

¶ 7 In July 2009, Jane filed a "Claim Against the Estate" and a claim for "Renunciation of Will." In the renunciation claim, Jane sought a finding the antenuptial agreement was unenforceable. In the claim against the estate, Jane asked for her share of the "after acquired property" and the life estate under the terms of the antenuptial agreement. *In re Estate of Isringhausen*, 2013 IL App (4th) 120367-U, ¶ 11 (*Isringhausen II*).

¶ 8 In September 2010, the trial court found the antenuptial agreement enforceable.

Id. ¶ 12. Jane appealed.

¶ 9 On appeal, this court considered the propriety of the trial court's decision on the enforceability of the antenuptial agreement. *Isringhausen I*, at ¶ 2. As part of the terms, Floyd's farms would pass to his children, and Jane would receive all household furnishings, the family vehicle, and a life estate in the family home, and she would be named a beneficiary of a \$50,000 life insurance policy. *Id.* ¶¶ 6-7. The antenuptial agreement includes a section entitled, "Ownership of after-acquired Property." This section states the following:

"All property acquired by either future husband or future wife, or by both of them, after solemnization of the marriage, whether real or personal, shall be jointly owned property of the parties as tenants in common, including all rents, issues, profits and proceeds of the property, with each owning a one-half undivided interest therein." *Id.* ¶ 8.

¶ 10 In an attempt to prove the antenuptial agreement invalid, Jane argued Floyd's 2007 will, which arguably attempted to define "after acquired property," was evidence Floyd concealed facts from her before the agreement was signed. *Id.* ¶¶ 13, 36. As part of this argument, Jane maintained, in part, the appellees were distributing according to Floyd's interpretation of "after acquired property" and the acts in doing so could not be undone. *Id.* ¶ 40. This court rejected the argument and stated the following, which Jane relies upon in this appeal:

"These matters are for the trial court to resolve when deciding Jane's claim against the estate. They are irrelevant to how paragraph 5 of the will and the antenuptial agreement should be

interpreted. This question, the question of how to interpret 'after acquired property,' is one for the trial court [(Citation.)]. This question does not affect the validity of the antenuptial agreement as it does not establish concealment or fraud." *Id.* ¶ 41.

¶ 11 Jane's claim against the estate survived. On this claim, Jane, in September 2011, served the estate with discovery requests. These requests included requests to admit facts regarding 2007 and 2008 rents from the farm. *Isringhausen II*, ¶ 13.

¶ 12 The estate moved to dismiss Jane's claim against the estate. In March 2012, the trial court ultimately dismissed Jane's claim against the estate on grounds of untimeliness. *Id.* ¶ 15. Jane appealed, arguing she was a "creditor" of the estate who was entitled to actual notice of the deadline for filing a claim against the estate. *Id.* ¶ 22 (citing 755 ILCS 5/18-3 (West 2008)). This court, in finding Jane's claim timely, agreed with Jane and remanded the case. *Id.* ¶ 31.

¶ 13 On remand, the parties continued discovery. In December 2013, Jane participated in a second deposition. She asserted her claim for marital property includes half of the farm income derived since 2003, when the farms were rented. She believed the farm to be separate property, but the income from the farm was marital.

¶ 14 In January 2014, Jane sought leave to file a first amended complaint. Over the Estate's objection, the trial court granted leave. Jane filed her first amended complaint in March 2014.

¶ 15 In her first amended complaint, Jane sought relief from the Estate as well as the children and beneficiaries of Floyd's estate, Bruce Isringhausen, Gary Isringhausen, Judy

Kuebrich, and Susan Isringhausen. Jane's claims included fraud, undue influence, conspiracy to commit undue influence, breach of fiduciary duty, tortious interference of contract, conspiracy to commit tortious interference of contract, intentional infliction of emotional distress, and conspiracy to commit intentional infliction of emotional distress. In these claims, Jane sought to recover amounts Floyd gave to his children in the years before his death.

¶ 16 In April 2014, counsel for the individual respondents filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2012)). These respondents maintained the prayers for relief on all counts against them were to set aside *inter vivos* transfers Floyd made to his children. They also argued the counts against them were improperly brought in probate proceedings and should be dismissed as untimely new allegations. The Estate filed two motions to dismiss, one under section 2-615 and one under section 2-619. The Estate maintained the gifts from Floyd to the children were proper under the antenuptial agreement. The Estate argued Jane's claims were too late, as they did not relate back to the initial claim against the estate filed on July 22, 2009.

¶ 17 The trial court agreed with respondents and granted the motions to dismiss. Regarding the 2-615 motions to dismiss, the trial court concluded, "[T]he underlying basis for these claims is that income derived from real property that is identified in this Prenuptial Agreement and which is protected by the Prenuptial Agreement, that income in [Jane's] view, constitutes property acquired after the marriage. The court disagrees." The court found the property acquired before marriage and any income deriving from that property remained protected by the antenuptial agreement. The court granted the section 2-615 motions to dismiss.

¶ 18 The trial court also addressed the section 2-619 motions to dismiss and found

Jane's claims barred by the statute of limitations. The court concluded Jane, in her initial complaint, sought property acquired after the marriage. The facts set forth in her first amended complaint, according to the trial court, were known to Jane before her original claim was filed. The court concluded Jane's new claims did not relate back. The court found no just reason to delay the appeal, given the nature of the proceedings, the duration of the proceedings, and Jane's age, as well as the fact that the holding affects discovery and issues relating to trial.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 The trial court granted respondents' motions to dismiss, including their motions to dismiss under section 2-615 (735 ILCS 5/2-615 (West 2012)). Section 2-615 motions challenge the "sufficiency of a complaint based on defects apparent on its face." *Beacham v. Walker*, 231 Ill. 2d 51, 57, 896 N.E.2d 327, 331 (2008). A trial court should not grant a section 2-615 motion to dismiss unless it is apparent no set of facts can be proved entitling the petitioner to relief. *Id.* at 58, 896 N.E.2d at 331. To survive such a motion to dismiss, a petitioner must allege sufficient facts placing "a claim within a legally recognized cause of action." *Id.* This court reviews orders granting a section 2-615 motion to dismiss *de novo*. *Id.* at 57-58, 896 N.E.2d at 331. In this endeavor, we take as true all well-pleaded facts and all reasonable inferences drawn from those facts. *Id.*

¶ 22 Regarding the trial court's dismissal under section 2-615, Jane develops one argument in her opening brief: the finding is premature because this court in *Isringhausen I* found the term "after acquired property" ambiguous and the trial court has failed to allow discovery and any resulting evidence on the definition of "after acquired property." In support,

Jane cites the following sentence from *Isringhausen I*: "This question, the question of how to interpret 'after acquired property,' is one for the trial court." *Isringhausen I*, 2011 IL App (4th) 100811-U, ¶ 41. Jane argues this court "remanded" the case for the trial court to determine the meaning of the ambiguous term "after acquired property," and, thus a dismissal of section 2-615 is premature.

¶ 23 Jane's argument is baseless. In *Isringhausen I*, this court considered whether the antenuptial agreement was enforceable. See *id.* ¶ 2. The term "after acquired property" was not a key issue in the case. It was raised as part of Jane's argument the agreement was unenforceable because Floyd fraudulently concealed his interpretation of the term. *Id.* ¶ 36. Jane asserted Floyd, in drafting his 2007 will, indicated "after acquired property" could be subject to different interpretations. *Id.* This court, in finding Floyd's will to be insufficient evidence of concealment, declined the opportunity to define the term "after acquired property." See *id.* ¶ 40-41. Instead, we left the question to the trial court. *Id.* ¶ 41.

¶ 24 Not only did this court not attempt to define "after acquired property," but also we did not find the term ambiguous. Nowhere in the text of *Isringhausen I* does the term "ambiguous," or any variation thereof, appear. No language shows the case was remanded. This court simply refused to examine the term and enter a holding before the trial court had a chance to rule on the matter. See *id.* ¶ 41.

¶ 25 It also cannot be reasonably argued this court's leaving the question of how to interpret "after acquired property" for the trial court equates to a finding of ambiguity. Contract language may be "interpreted" without a finding of ambiguity and thus without an examination of extrinsic evidence. A basic tenet of contract law is the act of *interpreting* a contract begins by

examining the language of the contract itself. *Stark Excavating, Inc. v. Carter Construction Services, Inc.*, 2012 IL App (4th) 110357, ¶ 22, 967 N.E.2d 465. Only when a term is susceptible to different reasonable interpretations is a finding of ambiguity necessitated. *Thompson v. Gordon*, 241 Ill. 2d 428, 441, 948 N.E.2d 39, 47 (2011). If the terms are defined and clear from the language of the contract, there is no ambiguity and the term is applied as written. *Stark Excavating*, 2012 IL App (4th) 110357, ¶ 22, 967 N.E.2d 465. In this case, consistent with these principles, the trial court interpreted the language in the antenuptial agreement and found it unambiguous. This finding rendered an examination of extrinsic evidence unnecessary and improper. See *Regency Commercial Associates, LLC v. Lopax, Inc.*, 373 Ill. App. 3d 270, 275, 869 N.E.2d 310, 316 (2007) (observing, if a contract's terms are unambiguous, the parties' intent is determined from the contract's words, but "[w]here an ambiguity exists, parol or extrinsic evidence may be considered to interpret the contract").

¶ 26 In her reply brief, Jane maintains this court, when rejecting her claim the antenuptial agreement was unenforceable, could do so "only on the basis that Floyd's 2007 Will was an interpretation of an ambiguous term." Again, Jane misreads or misrepresents the holdings of *Isringhausen I*. This court did not so hold. In *Isringhausen I*, this court held the 2007 will was not sufficient proof of concealment to undermine the validity of the Agreement. *Isringhausen I*, 2011 IL App (4th) 100811-U, ¶ 39. This court further found Floyd could not alone modify the terms of the Agreement. *Id.* ¶ 38. While observing Floyd's language in his 2007 will as an "interpretation" of language in the Agreement, it is well settled a term is not "ambiguous" simply because the parties disagree as to its interpretation. *Shields Pork Plus, Inc. v. Swiss Valley Ag Service*, 329 Ill. App. 3d 305, 310-11, 767 N.E.2d 945, 949 (2002).

¶ 27 Also in her reply brief, Jane further cites language from *Isringhausen II* as showing "it is apparent that this Court did not deem the Trial Court's February 23, 2012, determination of lack of ambiguity in the Antenuptial Agreement as being dispositive." Jane further contends this court noted Floyd acknowledged the Agreement was ambiguous.

¶ 28 Again Jane misstates or misunderstands our holdings. The plain language of *Isringhausen II* shows the trial court "had not yet resolved Jane's claim" regarding her discovery requests. *Isringhausen II*, 2013 IL App (4th) 120367-U, ¶ 35. While there appears to have been some language by the trial court indicating it was leaning in one direction (see *id.*), there was no decision on the interpretation of "after acquired property" ripe for appeal (*id.* ¶ 36). The ultimate issue in *Isringhausen II* was the timeliness of Jane's claim against the estate. See *id.* ¶ 38. In addition, as stated above, a term is not ambiguous simply due to the parties' disagreement as to its interpretation. *Shields Pork Plus, Inc.*, 329 Ill. App. 3d at 310-11, 767 N.E.2d at 949.

¶ 29 Jane makes no other challenge to the dismissal under section 2-615. The trial court's holding thus stands: Jane has no legally sufficient claim to the rents from Floyd's farms, as they were Floyd's property under the antenuptial agreement.

¶ 30 We note Jane's briefs touch on other arguments, but Jane failed to develop the arguments or cite the record in support in violation of Illinois supreme court rules. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Argument *** shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied upon."). Jane has forfeited those arguments. *Id.* ("Points not argued are waived ***."). We further note Jane's brief fails to comply with Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013), which requires the Statement of Facts to be free of argument or comment.

¶ 31 Having affirmed the trial court's section 2-615 dismissal, we need not consider the propriety of the orders granting the motions to dismiss under section 2-619 (735 ILCS 5/2-619 (West 2012)).

¶ 32 III. CONCLUSION

¶ 33 We affirm the trial court's judgment.

¶ 34 Affirmed.