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FIRST DIVISION
May 27, 2014

No. 1-13-2316
2014 IL App (1st) 132316-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANE PARK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 11 L 586
)	
BEN KIM,)	Honorable
)	Frank Castiglione,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred with the judgment.

ORDER

Held: Failure to consolidate law division case with dissolution of marriage case constituted abuse of discretion where the cases were of the same nature, arose from the same acts or events, involved the same issues, and depended largely upon the same evidence.

¶ 1 Plaintiff Jane Park filed suit against defendant Ben Kim (Kim) in connection with an alleged agreement made between the parties during the contemplation of marriage. The trial court awarded specific performance and ordered Kim to execute a joint tenancy deed on his property. Kim now appeals, arguing that the trial court abused its discretion when it failed to consolidate this case with his pending dissolution of marriage case, that the trial court lacked

subject matter jurisdiction over the case, and that the trial court's interpretation of the alleged agreement was incorrect as a matter of law. For the following reasons, we reverse.

¶ 2

I. BACKGROUND

¶ 3 In January of 2011, plaintiff Jane Park filed a complaint alleging that during the summer of 2010, she sought legal advice from Kim regarding traffic violations. She stated that in September of 2010, Kim informed her that he was romantically interested in her and wanted to marry her. Plaintiff alleged that to "further induce" her into accepting his offer of marriage, Kim drafted and executed a written agreement in Korean, wherein Kim agreed to grant plaintiff joint tenancy of his home, located at 6245 North Kirkwood Avenue in Chicago. A translation of the agreement was attached to the complaint and reads as follows:

"[Signature on upper left corner]

July 11, 2010

I, Bong Hyun Kim, will marry Kyung Ja Kim (Jane Park) and, regardless of what happens, correct the will within the fastest time possible after marriage and by modifying the myungdo-jeungsuh of the 62545 N. Kirkwood Ave Chicago, IL 60646 house which I currently possess, will modify to a joint ownership with Kyung Ja Kim and declare that I will correct and have registered the document to a joint tenancy that passes automatically to Kyung Ja Kim after Bong Hyun Kim's death and solemnly promise to complete [this].

I again solemnly promise and declare that, if Kyung Ja Kim (Kyung Ja Park) wants, I will complete the documents regarding this

within one week of marriage. If not, I will willingly submit to even a lawsuit for marriage fraud.

Written by Bong Hyun Kim"

¶ 4 The translator's notes state that a "myungdo-jeungsuh" is a document that indicates to whom a property will be given.

¶ 5 Plaintiff alleged in her complaint that she accepted the agreement "through performance by marrying Kim on September 19, 2010." The wedding ceremony was held in front of approximately 50 guests. Plaintiff alleged that after their marriage, she "conducted all of the traditional duties of a wife" like "maintaining the home, caring for Kim's health and providing for his other needs." Plaintiff further alleged that Kim failed to modify the deed of his home to add her as a joint tenant, and that he never filed their marriage certificate. Plaintiff stated that due to Kim's deliberate attempts to hide their marriage, she moved out of the house.

¶ 6 Plaintiff alleged two causes of action in her complaint. The first was for breach of contract. Plaintiff stated that the agreement regarding joint tenancy was a valid contract, and that Kim breached that contract by failing to amend the deed to include plaintiff as a joint tenant to his home. The second claim was for intentional infliction of emotional distress, which is not at issue in this appeal.

¶ 7 Kim filed a motion to dismiss stating that prior to marriage the parties discussed placing his home in joint tenancy. Kim wrote out his intention to do that "at a later date upon Jane Park's request." Kim alleged that plaintiff never requested him to change the title of his home. Kim further alleged that on December 17, 2010, Kim had filed a petition for dissolution of marriage, and plaintiff filed a counter petition. In her counter petition, plaintiff alleged that the document amounted to a premarital agreement which should be enforced.

¶ 8 In his motion to dismiss, Park stated that none of the facts alleged in plaintiff's complaint rose to a breach of contract. He stated that the parties were already engaged to be married at the time the document was drafted, on July 15, 2010, and thus the agreement could not have been an "inducement" to marry Kim. Kim further alleged that there was no contractual duty alleged in plaintiff's complaint, and thus the case should be dismissed.

¶ 9 In ruling on the motion to dismiss, the trial court held that at the pleading stage of the litigation, "Kim's writing of the agreement constitutes an offer" and that Park accepted the offer by marrying Kim on September 19, 2010. The trial court noted that plaintiff's complaint alleged that Kim offered to modify the deed to his house to a deed held in joint tenancy with plaintiff "if she agreed to marry him," which "constitutes sufficient consideration, insofar as Kim suffered the detriment of changing the deed to his house to one held in joint tenancy." The trial court also noted that plaintiff alleged that she performed her obligation under the bargain when "she married Kim." Construing the allegations in the complaint in favor of plaintiff, the court found that the complaint adequately set forth facts and allegations to support a cause of action for breach of contract.

¶ 10 Thereafter in September of 2011, Kim filed a motion to consolidate this case with the pending dissolution of marriage proceeding in the domestic relations division. Kim stated that on December 17, 2010, he had filed a petition for dissolution of marriage against plaintiff, which was still pending. Kim argued that where actions in different divisions of the circuit court are between the same parties, on the same subject, and test the same rights, the court which first acquires jurisdiction retains its jurisdiction and may dispose of the entire controversy.

¶ 11 On October 3, 2011, the assignment judge of the law division denied Kim's motion to consolidate.

¶ 12 On April 17, 2013, a trial was held on the breach of contract claim. The trial court asked the parties if there was a divorce matter pending. Counsel for Kim stated that there was a marital settlement agreement ready to go to prove-up the case once the law division case was finished. The divorce case was being held until the resolution of the law division case because, if Kim was found liable, Kim would be asking for specific performance while plaintiff would be seeking money damages. Both parties noted that they had agreed in the dissolution of marriage case that the document in question did not amount to a prenuptial agreement. The parties noted that the dissolution of marriage case was "on hold" waiting for a ruling from this case.

¶ 13 Ben Kim was called first as an adverse witness. Kim testified that he met plaintiff at a coffee shop in 2010 in order to give her legal advice on a traffic ticket. Kim testified that there was never a formal engagement between him and plaintiff. He stated that he wrote the "agreement" in question on July 15, 2010, and that plaintiff was with him, "laughing and joking." Kim testified that he wrote it out of jest and "playful amusement." Kim testified that plaintiff was concerned about where she would live if he passed away, so she wanted him to change the deed on the house so she could stay there. Kim testified that there was no discussion regarding whether plaintiff needed to marry Kim in order for Kim to sign the document.

¶ 14 Kim testified that the parties got married on September 19, 2010. Kim stated that after staying in the house only 17 days, plaintiff left him.

¶ 15 Plaintiff Jane Park testified that a friend of hers had tried to set her up with Kim several times, but she said no due to the age gap. She eventually met him to discuss a speeding ticket, and they became romantically involved. When Kim gave her the note, he was not laughing and plaintiff did not think he was joking. Plaintiff testified that she would not have married Kim if

he had not given her the note. Plaintiff believed that if she married him, he would put her name on the title to the house.

¶ 16 Plaintiff testified that four days after their marriage, she asked Kim if he had filed the marriage certificate and he said he had, and that he would pick it up in two weeks. As of October 9, 2010, he still had not filed the marriage certificate so she left him a few days later and moved in with her ex-husband. Thereafter, she received divorce papers from Kim, which is when she realized she had been legally married despite not filing the marriage certificate.

¶ 17 On cross-examination, plaintiff testified that in May of 2010 she was "not 100 percent" sure she wanted to marry Kim, and that she was "still debating," but she accepted his proposal in May regardless. Defense counsel impeached plaintiff with her deposition testimony in which she stated that she was having reservations about marrying Kim, and told him so a week prior to their marriage.

¶ 18 Plaintiff testified that she moved out for good on October 17, 2010, at which point she did not think she was married because the marriage certificate had not yet been filed. Defense counsel again impeached plaintiff with her deposition testimony in which she stated that at the time she moved out she thought she was married.

¶ 19 Defense counsel also called Kim to testify. He testified that plaintiff proposed to him on May 31, 2010, at a hotel. She cried with happiness afterwards and claimed that Kim was saving her from her loneliness. Kim testified that there was a 25 year age gap between them. They then booked a wedding date and a honeymoon cruise. Kim testified that he had to cancel the cruise thereafter because he found out plaintiff wanted a "big" diamond ring. They canceled the cruise and booked a cheaper one after they went ring shopping. Plaintiff chose a \$14,000 ring, and Kim paid for it.

¶ 20 Kim testified that two weeks before the wedding, he and plaintiff got into a fight because Kim would not give her money to go to the beautician. As a result, plaintiff told him she wanted to cancel the wedding. That was the first time she expressed to Kim that she had reservations about the wedding.

¶ 21 Kim further testified that he did not file the marriage certificate right away because they were busy shopping for furniture and plaintiff never mentioned it. He forgot to do it, and then became sick on October 3, 2010.

¶ 22 Plaintiff testified that when she married Kim, she was still living with her ex-husband and her son in a different house. When she moved in with Kim, she did not change her mailing address and did not move her belongings into his house. She did not change her driver's license. Kim paid for the entire wedding, as well as all of plaintiff's expenses after the wedding.

¶ 23 At the close of trial, the trial court found that the parties had previously agreed to be married and that "for whatever reason on July 15th modified that agreement to further include defendant's promise to modify the existing deed on the Kirkwood property and to deed that into joint tenancy with plaintiff." The trial court further found that Kim failed to perform his obligation under the modification agreement. The trial court ordered specific performance of the agreement and ordered Kim to deed the property into joint tenancy with plaintiff.

¶ 24 Kim filed a motion to reconsider, which was denied, and Kim now appeals.

¶ 25 **II. ANALYSIS**

¶ 26 On appeal, Kim argues that (1) the assignment judge abused his discretion when he failed to consolidate this case with the domestic relations case, (2) the trial court lacked subject matter jurisdiction, (3) plaintiff's claim was barred by *res judicata*, and (4) the trial court's interpretation of the written agreement was incorrect as a matter of law.

¶ 27 Kim's first argument is that the assignment judge abused his discretion when he failed to consolidate this case with the dissolution of marriage case that was pending before the domestic relations division. Kim filed his petition for dissolution of marriage against plaintiff on December 17, 2010. Plaintiff filed a counter-petition for dissolution of marriage on February 4, 2011, alleging that Kim had agreed that within one week of marriage he would place plaintiff on the title to his residence as a joint tenant. Plaintiff requested "equitable interest" in the real estate. On January 18, 2011, plaintiff then filed the complaint in the instant case against Kim in the law division, alleging breach of contract due to Kim's failure to place her on the title to his residence as a joint tenant. Kim sought to consolidate the instant law division case with the pending dissolution of marriage case, arguing that actions in different divisions of the circuit court, between the same parties, on the same subject, should be disposed of by the division of the court which first acquired jurisdiction. His motion to consolidate was denied by the assignment judge of the law division.

¶ 28 In Cook County, motions to consolidate cases that are pending in different divisions are heard by the assignment judge. Cook County Circ. Ct. Gen. Order 12; *LaSalle National Bank v. Helry Corporation*, 136 Ill. App. 3d 897, 905 (1985). "Consolidation is proper when the cases 'are [of] the same nature, arise from the same act or event, involve the same or like issues, and depend largely upon the same evidence.' " *LaSalle National Bank*, 136 Ill. App. 3d at 905 (quoting *Robinson v. Robinson*, 100 Ill. App. 3d 437, 449 (1981)). In Illinois, "[d]ivisions of the circuit court have equal and concurrent subject matter jurisdiction and where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts in Illinois having concurrent jurisdiction, the court which first acquired jurisdiction, its power being adequate to the administration of complete justice, retains

jurisdiction and may dispose of the entire controversy to the exclusion of all coordinate courts."

In re Marriage of Wojcicki, 135 Ill. App. 3d 248, 251 (1985). A court has discretion in choosing whether to consolidate. *LaSalle National Bank*, 136 Ill. App. 3d at 905.

¶ 29 In the case of *In re Marriage of Isaacs*, 260 Ill. App. 3d 423, 425 (1994), the wife filed a petition for dissolution of marriage, and eight days later, the husband filed an action in the chancery division of the circuit court for breach of fiduciary duty and seeking the imposition of a constructive trust over shares of stock held by the wife. The wife petitioned the chancery court to consolidate the chancery case into the divorce case, and her petition was denied. *Id.* at 425. In his appeal, the husband argued that the trial court erred in barring him from collaterally asserting his claims to the wife's interest in the stock. This court noted that the divorce and the husband's chancery action were both "seeking to obtain title" to the stock at issue but stated:

"While we must reserve comment on the chancery court's denial of [the wife's] motion for consolidation as it is not properly before us, we nevertheless feel obliged to point out that both common sense and sound public policy dictate that matrimonial litigants should not be permitted to make a circuitous run around the divorce court in coordinate courts."

Isaacs, 260 Ill. App. 3d at 429.

¶ 30 The policy considerations discussed in *Isaacs* were found applicable in the case of *Partipilo v. Partipilo*, 331 Ill. App. 3d 394, 400 (2002), where the court noted that if the wife "was permitted to halt the divorce case until the conclusion of her chancery suit against [the husband] *** then any husband or wife whose spouse filed a petition for dissolution of marriage could delay the divorce by filing a separate lawsuit against or involving the spouse and arguing that action must be resolved before the divorce could proceed." *Id.*

¶ 31 In the case at bar, the divorce action initiated by Kim preceded the law division action filed by plaintiff. The relief sought by plaintiff in her law division action, to be placed on the title to the Kirkwood property as a joint tenant, is the same as that prayed for in her counter-petition to Kim's petition for dissolution of marriage. Thus, since the domestic relations division acquired jurisdiction first and possessed adequate power to dispose of the matter, the motion to consolidate should have been granted.

¶ 32 We find that the assignment judge of the law division abused his discretion in not consolidating the cases. The two suits "obviously arose from the same series of issues and depended largely on the same evidence," and failure to consolidate could have resulted in inconsistent judgments. See *LaSalle National Bank*, 136 Ill. App. 3d at 905 (assignment judge abused discretion in not consolidating the cases, but court found error to be harmless since parties were not prejudiced by failure to consolidate); *Turner v. Williams*, 326 Ill. App. 3d 541, 550 (2001) (trial court's denial of motion to consolidate was an abuse of discretion where the actions depended largely on the same evidence, and where a risk of double recovery was present); *Clore v. Fredman*, 59 Ill. 2d 20, 27-28 (1973) (supreme court ordered two actions be consolidated on remand because the cases contained common questions of law and fact, which could have and should have been readily determined at the same time); *Djomlija v. Urban*, 107 Ill. App. 3d 960, 968 (1982) (issues raised by declaratory judgment were virtually identical to those raised in the specific performance action, and failure to consolidate could have resulted in "inconsistent judgments.") "While the denial of the motion to consolidate, standing alone, might not be reversible error," we believe the cases ought to have been consolidated in light of their common questions of law and fact which should have readily been determined at the same time.

Clore, 59 Ill. 2d at 28. However, we believe remanding this case for consolidation would be an act of futility for the following reasons.

¶ 33 This particular written document should have been analyzed under the Uniform Premarital Agreement Act (750 ILCS 10/1 *et seq.* (West 2010)) (the Act). The Act defines a premarital agreement as "an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage." 750 ILCS 10/2 (West 2010). The Act further states that parties to a premarital agreement may contract with respect to the rights and obligations of each of the parties in any of the property of either or both of them, the right to transfer, assign, or otherwise manage and control property, and the disposition of property upon death. 750 ILCS 10/4(a)(1), (2), (3) (West 2010).

¶ 34 In the case at bar, the agreement was made in contemplation of marriage, and was to be effective upon marriage. The agreement dealt with the rights and obligations of the parties in Kim's Kirkwood property. Kim testified that plaintiff was worried about where she would live upon Kim's death, which is why the agreement was drafted. And the agreement specifically states that Kim will transfer the property to joint tenancy that passes automatically to plaintiff "after [Kim's] death". Because the agreement concerns the parties' rights and obligations in a property and the disposition of property upon death, this agreement should have been analyzed under the Uniform Premarital Agreement Act. We therefore reverse the trial court's finding of a valid contract in this case. However, we decline to decide whether or not the writing was a valid premarital agreement under the Act because that is not an issue before us on appeal, and this exact issue has already been decided by the domestic relations division where the court found that the writing did not constitute a premarital agreement. See *Turner*, 326 Ill. App. 3d at 550 (reversing the judgment entered, as well as the judgment denying the motion to consolidate).

¶ 35

III. CONCLUSION

¶ 36 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

¶ 37 Reversed.