Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2907

Date: **22-Sep-21**

From: **Steve Leimberg's Estate Planning Newsletter**

Subject: **Jeff Baskies: Recent Florida Appellate Decision Holds a Morning of the Marriage Premarital Agreement is Enforceable**

"In a fact pattern befitting a made-for-TV movie, a premarital agreement executed under the most extreme circumstances was ultimately upheld on summary judgment and appeal in a Florida probate dispute questioning its validity. The case is Williams-Paris v. Joseph, Paris et al (the 'Williams-Paris v. Joseph' case).

Many issues arose in the Williams-Paris v Joseph case, informing the appellate decision, including: (i) the validity of the execution of the document in the presence of two 'subscribing witnesses;' (ii) the trial court's summary judgment (upheld on appeal) rejecting any argument that the document was the product of fraud, duress, coercion, over-reaching or undue influence, even under the extreme fact pattern involved; (iii) an interesting choice of law issue impacting the present and future of the legal doctrine of lex loci contractus (at least with respect to marital agreements); (iv) the validity (or invalidity) of a homestead waiver (what would a Florida probate dispute be without a homestead issue); and (v) the ultimate morals of the story for planners and clients alike.

In brief: A man ('Calvin') awoke his fiancé ('Arlene') at 7:00 am on their wedding day, led her to the office in his Martha's Vineyard vacation home, worked with her drafting an 'on-line' prenup (apparently using 'Rocket Lawyer' to produce the form), and drove her to a notary, where they both signed the document. Thereafter, Arlene rushed back to get ready for the wedding ceremony which occurred at 4 pm that afternoon in the presence of the family members and guests who were all already in Martha's Vineyard as of that morning. After Calvin died 4 years later, intestate, Arlene filing an action in court challenging the validity of that prenuptial agreement.

In an opinion dated September 1, 2021, Arlene lost most of her claims, including her arguments as to duress, coercion and undue influence (knocked out on summary judgment, no less).

This 4th DCA decision (in the Williams-Paris v Joseph case) comes about 7 months after the 3rd DCA (in the Bates v Bates case) voided a prenuptial agreement signed the day before the wedding based on arguments of coercion (although not on duress). Granted the facts in both cases are very different, as were the circumstances, for sure, but still this opinion let stand a summary judgment on duress and coercion; whereas the Bates court not only let those counts go to trial, but ultimately the trial court and the appellate court agreed to void that nuptial due to coercion, as alleged by the less wealthy fiancé (the eventual wife). Members should note that ***Chuck Rubin*** *recently analyzed that 'last minute' pre-nup case (Bates v. Bates) case in Estate Planning Newsletter #2887.*

Can planners (some of whom worry every time they prepare or review prenuptial agreements) sleep easier now? Should clients who sign prenuptial agreements they feel are not valid challenge them during the marriage? These and other lessons will be explored in this newsletter."

Jeff Baskies provides members with commentary that examines the fascinating case of *Arlene Williams-Paris v. April Nelle Joseph, Priscilla Paris-Austin, Theodore Paris, and Samuel Paris*. The author discloses that the attorneys in the trial and appeal are all friends; they are fellow probate counsel who are liked and respected by the author. The comments expressed herein are purely those of the author as an outside reviewer of the decision and although sometimes pointed (or maybe even controversial) are not meant to express an opinion on the attorneys themselves (other than a very positive one), their positions taken or the results of their advocacy. The decision just made the author say "hmmmm…" Also, as noted herein, the decision is not yet final and may be subject to a re-hearing or further appeal.

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Here is his commentary:

EXECUTIVE SUMMARY:

In a fact pattern befitting a made-for-TV movie, a premarital agreement executed under the most extreme circumstances was ultimately upheld on summary judgment and appeal in a Florida probate dispute questioning its validity.[1]

Many issues arose in the case, informing the appellate decision, including: (i) the validity of the execution of the document in the presence of two "subscribing witnesses;" (ii) the trial court's summary judgment (upheld on appeal) rejecting any argument that the document was the product of fraud, duress, coercion, over-reaching or undue influence, even under the extreme fact pattern involved; (iii) a fascinating choice of law issue impacting the present and future of the legal doctrine of lex loci contractus (at least with respect to marital agreements); (iv) the validity (or invalidity) of a homestead waiver (what would a Florida probate dispute be without a homestead issue); and (v) the ultimate morals of the story for planners and clients alike.

In brief: A man ("Calvin") awoke his fiancé ("Arlene") at 7:00 am on their wedding day, led her to the office in his Martha's Vineyard vacation home, worked with her drafting an "on-line" prenup (apparently using "Rocket Lawyer" to produce the form), and drove her to a notary, where they both signed the document. Thereafter, Arlene rushed back to get ready for the wedding ceremony which occurred at 4 pm that afternoon in the presence of the family members and guests who were all already in Martha's Vineyard as of that morning. After Calvin died 4 years later, intestate, Arlene filing an action in court challenging the validity of that prenuptial agreement.

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note that **Chuck Rubin** recently analyzed that “last minute” pre-nup case (*Bates v. Bates*) in Estate Planning Newsletter #2887.

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FACTS:

The facts of Williams-Paris v. Joseph, Paris et al are so fascinating, I will share them with you verbatim as retold by the 4th District Court of Appeal in its September 1, 2021 ruling:

> This case involves the enforceability and scope of a prenuptial agreement entered into hours before the Wife [Arlene Williams-Paris] and Calvin Paris ("the decedent") got married. The couple lived together in the decedent's home for approximately five years before the wedding and continued to do so afterwards.
>
> Approximately a year before the marriage, the decedent told the Wife that "if we get married, I would like you to get a prenup." Wife responded that she did not want to pay for a prenuptial agreement, and according to the Wife, the issue was never brought up again until their wedding day. In June 2015, the decedent proposed that the couple get married the following month when his family would be vacationing in Martha's Vineyard, Massachusetts where he owned a second home. The Wife agreed and made the arrangements with a month's notice. At the time the parties married, the decedent was 83 years old, and the Wife was 58 years old. Both had been married before.
>
> On the day of the wedding, the decedent woke the Wife at 7:00 a.m. demanding her to find a prenuptial agreement online and sign it. When she expressed her dismay, the decedent refused to marry her unless she signed one, explaining that she was to be his fifth wife and a prenuptial agreement was necessary in the event of divorce. At that point, the family members and guests were all in Martha's Vineyard for the wedding. Feeling pressured by the significant potential embarrassment of canceling the wedding, the Wife reluctantly followed the decedent downstairs to the small office in the home, where the decedent closed the door and instructed her to search the word "prenup" online. The Wife then selected a website offering legal

forms online using a digital program to create an agreement by filling in responses to prompts. Most of the information responding to the prompts was supplied by the decedent. The form agreement could not be read until all of the questions asked in the prompts were completed. After the prompts were completed, including ones providing their financial information for the exhibits to the agreement, the Wife printed the prenuptial agreement. The decedent then drove the Wife to a notary nearby where they signed the agreement in the notary's presence. After the agreement was signed, the Wife rushed to get ready for the marriage ceremony, which occurred at 4:00 p.m. that day.

Approximately four years after the marriage, the decedent passed away and intestate while still married to the Wife. Thereupon, the Wife petitioned the probate court to: (1) invalidate the prenuptial agreement; (2) declare the residence described in paragraph 2 of the agreement to be the decedent's homestead subject to her election to take a one-half interest; and (3) award her intestate share and elective share of the estate as spouse. The petition argued that the prenuptial agreement was invalid based on fraud, deceit, duress, coercion, misrepresentation, and overreaching since the decedent never explained that it applied in the event of death ("count I"), and because it contained unfair or unreasonable provisions ("count II"). Additionally, she petitioned for rescission of the agreement based on her unilateral mistake ("count III"). The petition was served on the appellees, the decedent's children ("the Children").

Subsequently, the Wife moved the probate court for instructions and determination of whether Massachusetts or Florida law governed the enforceability of the prenuptial agreement. As discussed more fully in the analysis section below, the probate court determined Florida law governed the issue of the agreement's validity.

The Children then moved for summary judgment, arguing that the prenuptial agreement had a specific provision pertaining to a spouse's death and therefore discounted Wife's argument that it was only effective in the event of divorce. Additionally, in response to the Wife's contention that the decedent did not fully disclose his assets prior to the agreement being signed or in the exhibits attached to the agreement, the Children argued that full disclosure was not required under Florida law when the agreement's validity is contested in a probate proceeding. The Children further argued the Wife knew what

she was signing and was not coerced into signing, as verified by the notary's affidavit filed in support of the motion stating that the notary did not indicate that anything unusual occurred when the prenuptial agreement was signed. The Wife filed a response and counter affidavit to the motion for summary judgment.

The probate court granted the Children summary judgment on the Wife's coercion and duress arguments. However, the probate court denied the Children summary judgment on the Wife's unilateral mistake argument, ruling material disputed facts remained as to whether the decedent represented the agreement was to apply only in the event of divorce and not death.

After a nonjury trial on the disputed issue of misrepresentation and unilateral mistake, the probate court denied the Wife's petition to invalidate the prenuptial agreement on those issues. The Wife then gave notice of appeal.

Those are the facts of the case as summarized by the 4th DCA. Based on the tone of this re-telling of the facts, one might assume that is Arlene's side of the facts. However, while the author assumes Arlene's retelling of the story is likely quite similar, the quote is taken verbatim from the opinion of the 4th DCA.

Given the tone, manner and way the facts are presented, one might assume the appellate court was preparing to explain why the premarital agreement was not enforceable. However, if one assumes so, one would be wrong.

<u>The Rulings</u>:

Essentially, the appellate court ruled/noted the following:

1. First, and perhaps most frustratingly, the 4th DCA essentially affirmed - without comment - the trial court's summary judgment as to the validity of the agreement, dismissing Arlene's claims the premarital agreement should not be enforced based on duress, coercion, over-reaching or undue influence.

   The trial court ruling means the trial Judge found no genuine dispute <u>as to any material fact</u> with regard to those elements to the validity of the agreement (because, of course, a premarital agreement produced by fraud, duress, coercion or undue influence is not valid or

enforceable). Pursuant to Florida Rule of Civil Procedure 1.510(c), a movant is entitled to summary judgment "if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

No disrespect to the lawyers or judges involved, but in light of the facts as the 4th DCA presented them, how is it possible there was no genuine issue as to the possibility that this premarital agreement was the product of fraud, coercion, duress or undue influence? Moreover, if you compare Chuck Rubin's summary of the facts in Bates v. Bates, what is so startlingly different in that case vs this one that the Williams-Paris v. Joseph case would be tossed on summary judgment, while the Bates case went to trial (and appeal) voiding a "day before the wedding" nuptial due to duress and coercion (and the holding voiding on coercion was upheld on appeal)?

I assume the trial court explained its reasoning for ruling on summary judgment, but given how fact-intensive cases of fraud, duress, coercion and undue influence are, it would be very interesting to better understand how a summary judgment applied.

Nonetheless, assuming the trial court had some logical reasoning for its summary judgment holding, unfortunately, the reasoning for the summary judgment and the reasoning for upholding the summary judgment were not manifest in the appellate decision (essentially just affirming the ruling and affording deference to the trial court).

Summary Judgment on those claims seems odd (at least to me), based on the facts as presented by the 4th DCA. Without explanation in the appeal, the 4th DCA affirmed the trial court's finding that there were no genuine issues of material fact as to the potential this premarital agreement was entered into and impacted by coercion, duress, stress, over-reaching or undue influence. Yet, the facts (as articulated by the 4th DCA) reveal Arlene (not an attorney – nor an

experienced business person) was: (i) awakened by her fiancé at 7 am on the date of the wedding, (ii) forced to type up her own prenuptial agreement using an unfamiliar online form-generating software, (iii) neither afforded the advice of counsel nor even an opportunity to seek the advice of counsel (as she was literally trapped on an Island approximately 20 miles away from the coast of Cape Cod and accessible only by ferry or plane), and (iv) driven by her fiancé to then sign that document, without discussion or negotiation of any kind (at least per the statement of the facts). All of that and more took place within a few short hours on the morning of her wedding with family and guests who had all arrived from out of town waiting for the marriage ceremony.

Of course, had the issue been tried, we can imagine a situation where the facts presented may have led the trial court to rule the agreement was valid (free from duress, coercion, etc), but it is frustrating that the court did not further explain how the trial court concluded there was no genuine issue of material facts based on the story as told by the 4th DCA. Thus, the summary judgment is a very interesting aspect of the opinion (to me), which leaves the reader wishing there was something more specific in the opinion. Perhaps there will be a rehearing or a further appeal and this aspect of the opinion will be further explored.

2. In a detailed footnote, the court noted that the premarital agreement may have been invalidly executed, but also noted the issue had not been argued or briefed, and so "punted" on the issue.

But if we delve into the footnote a bit, it turns out the document was signed by Calvin, it was signed by Arlene and it was notarized by a notary, who was physically present when the parties signed. As described in the footnote, the issue was if the parties and the notary properly and validly constituted subscribing witnesses.

F.S. § 732.702(1), provides in part:

> (1) *The rights of a surviving spouse to* an elective share, intestate share, pretermitted share, *homestead*, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, *may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses*.

It would be interesting to see if this issue (and this case) goes further (perhaps a motion for rehearing or a further appeal), as it would be helpful to know if the signature of Calvin, a party, also constitutes the signature of a subscribing witness as to the other party, Arlene. Further, does the signature of the notary, as a notary (but not clearly as a subscribing witness), also constitute a subscribing witness?

Remember, the statute requires execution by the waiving party (Arlene) in the presence of two subscribing witnesses (the issue being whether Calvin, a party, and the notary, constitute subscribing witnesses to her signature). Although the issue of execution was apparently not tried or argued on appeal, the footnote indicates the 4th DCA was interested in the subject, and that should make practitioners interested as well.

3. Next, the 4th DCA discussed and resolved an interesting choice of law issue. Apparently, the prenuptial agreement (again, produced via an online service – apparently Rocket Lawyer) did not include a choice of law or governing law provision. Further, of course, the agreement was signed by the parties while physically present in the Commonwealth of Massachusetts. At the time of execution, however, both parties were legal residents and domiciliaries of the state of Florida.

The wife argued Massachusetts law should apply and cited to the rule of *lex loci contractus* in support. In general, and subject to exceptions, the rule of *lex loci contractus* specifies that the law of the jurisdiction where a contract was executed should control the document, including questions as to the document's validity.

The decedent's estate and children argued Florida law should apply as the parties resided there. They sought to apply the public policy exception to the *lex loci contractus* rule, which would preclude Massachusetts law from applying to the determination of the agreement's validity. The public policy exception is apparently a long-standing exception to the rule of *lex loci contractus* (based on the holding).

Not shockingly, a great deal was at stake in this argument: (i) Massachusetts law requires financial disclosure for a prenuptial agreement's validity and for a postnuptial agreement's validity; (ii) Florida law only requires financial disclosure for a postnuptial agreement's validity and does not require financial disclosure for a premarital agreement waiving post-death rights. In other words, F.S. § 732.702 only requires a financial disclosure if the agreement is executed after marriage (but not before).

What ensues in the 4th DCA opinion is a long and interesting discussion of the doctrine of *lex loci contractus* and its exceptions, leading to the ultimate conclusion that the public policy exception applied in this case, as the parties never lived together as a married couple in Massachusetts (I guess excluding the day of the wedding and however long they remained after), and for other reasons.

Interestingly, one of the reasons cited for applying Florida law was that an issue in the case involved the decedent's homestead, and Florida has a strong public policy for homestead protections (as everyone likely knows). So, partially relying on the fact that the case included a homestead issue, the 4th DCA agreed with and affirmed

the probate court's decision to apply Florida law to the prenuptial agreement's validity.

Ironically, had the 4th DCA agreed with the wife and applied Massachusetts law to the validity of the prenup, the prenup presumptively would have been invalid; thus, the decedent would have died intestate and without a premarital agreement. Therefore, if the 4th DCA applied Massachusetts law, the wife would have been equally protected with respect to the Florida homestead and even more protected with respect to the rest of the estate assets.

However, ultimately, the court's logic in this regard resonates (at least to the author). It seems logical to apply Florida law to this premarital agreement between two Florida residents - who just happened to be sojourning in the Commonwealth for a few days when they signed this premarital agreement. In a succinct concurring opinion, Judge Warner argued the "significant relationship" test should be used to determine choice of law issues whenever interpreting prenuptial agreements. Further, the concurring opinion states a good reminder: "[t]he best way to avoid a conflict of law issue, however, is for the parties themselves to designate in their agreement what jurisdiction's law is to apply." That is obviously sound advice and another good reason to use lawyers - not computers – to draft marital agreements.

4. Next, and fittingly for a Florida probate litigation, the prenuptial agreement and ensuing litigation and appeal, of course, had to include an issue of homestead jurisprudence. Florida's "legal chameleon" seemingly pops up in every probate litigation. In this case, there were potentially ambiguous or conflicting directions with regard to the homestead property.

Paragraph 2 of the premarital agreement states:

> RESIDENCE. It is intention of the parties that the *residence* presently owned by [the decedent] *located at 601*

> *N.W. 12 Street, Delray Beach*, Florida *shall not be affected by this Agreement*. (Emphasis added).

Paragraph 10 of the premarital agreement states in pertinent part:

> DEATH. Each party agrees that if he or she survives the death of the other, such party will make no claim to *any part of the real or personal property of the other*. In consideration of such promise and in consideration of the contemplated marriage, each party knowingly, intentionally, and voluntarily waives and relinquishes any right of . . . *homestead*, inheritance, descent, distributive share, or other statutory or legal right, now or later created, to share as surviving spouse in the distribution of the estate of the other party. The parties agree that it is their mutual intent that neither shall have or acquire any right, title, or claim in and to *the real or personal property of the other* by virtue of the marriage. The estate of each party in the property now owned by either of them, or acquired after the date of marriage by either of them, shall descend to or vest in his or her heirs at law, legatees, or devisees, as may be prescribed by his or her Last Will and Testament or by the laws of the state where the decedent was domiciled at the time of death, as through no marriage had taken place between them. (Emphasis added).

The 4th DCA concluded that paragraph 2's express language regarding a very specific parcel of Delray Beach property (which happened to be the address of Calvin's homestead) and stating the property "shall not be affected by this Agreement" constituted an unambiguous exemption of the Delray Beach property from the premarital agreement. Therefore, the court concluded, the Delray Beach property was not to be impacted by the "homestead" waiver in paragraph 10.

In its holding, the 4th DCA found it had to give meaning to the words in paragraph 2 of the agreement ("shall not be affected by this Agreement") and couldn't give meaning to those words if it ruled the homestead was waived by agreement. Instead, the court found the waiver of "homestead" in paragraph 10 was potentially intended to apply to some other residence or a future residence as a homestead

– but not to the Delray Beach property specifically identified in paragraph 2. In a second important footnote the court found:

> Because both sides contend on appeal that paragraph 2 is unambiguous, our analysis accepts that assertion. We therefore treat the reference to "homestead" in paragraph 10 to envision the possibility before the marriage that the decedent may possibly change his primary residence after the marriage.

This was the one issue where the 4th DCA reversed the probate court and found the Wife did not waive her spousal interests in the Delray Beach property, including her surviving-spouse's right to elect a one-half interest as tenants-in-common as to that homestead.

Unless something happens in the trial court (the decision seems to remand a determination to the trial court) or there is some form of partition action, it would be interesting to see if the surviving spouse and children of the deceased (all as tenants in common owners) decide to move into the homestead together! We are all wishing them good luck.

COMMENT:

Perhaps lessons can be gleaned from this decision.

For Clients:

One wonders if there are take-aways from a case like this from the client perspective.

Should Arlene have refused to type the agreement and sign it? The answer to that seems clear in hindsight. But what would have happened? Would Calvin have gone through with his threat and cancelled the wedding? If so, was typing and signing the agreement a better course of action for her? Was she better off then had he broken off the relationship right then and there? Or if she refused to cooperate might Calvin have married Arlene without a prenup? In that case, might they have gone back to Florida, taken their time to engage counsel and instead

entered into a post-marital agreement? Unfortunately, we will never know of course.

I think that is likely the lesson for clients. Any similarly situated client (with all of this knowledge, of course), should instead consider negotiating a post-marital agreement. After all, neither fiancé was really well-served by rushing into this prenup. At the least, we can assume Hundreds of Thousands of Dollars have been incurred by both sides fighting its validity. Instead, the clients perhaps would have been better served if they got married without the hasty, "morning of the marriage" prenup, and instead addressed a postmarital agreement when there was time (and more clearly no stress or duress) - after the wedding ceremony.

Once it was over, and a 'morning of the marriage' prenup (or 'day before the marriage' pre-nup) was signed, what should a client do?

After the prenup signing on the morning of the marriage, should Arlene have filed for divorce? Or should Arlene have filed a declaratory judgment action? Or should Arlene have done nothing until after her husband's death and then sought to set aside the agreement, as she did in this case?

This is a really lousy situation for a client to be in. If she sought to set aside the agreement while her husband was still alive, one can imagine a divorce would ensue. By doing nothing, however, was she possibly made worse off?

In Florida (and maybe in other states as well), case law suggests Arlene was not obligated to seek to set aside the premarital agreement during the marriage. The case law holds a spouse has not waived her rights to challenge a premarital agreement (upon the death of her spouse) if she did not file a lawsuit to set aside the premarital agreement during the marriage/during his lifetime.

In hindsight, it seems the moral of the story for the client is: Arlene and Calvin both should have sought competent Florida counsel to negotiate a "fair" post-marital agreement, created at a time free of duress and after full financial disclosure, earnest negotiations and with separate representation.

<u>For Drafters</u>:

For attorneys who draft or review marital agreements, should a decision like this help us sleep better at night? After all, first the trial court upheld and enforced a nuptial agreement with more problems in it than we'd ever prepare. And second the 4th DCA affirmed in large part.

Assuredly, we all the worry over the fairness of the agreements we prepare, the adequacy of the full financial disclosures, the completeness of the independent representation by counsel and the timing of the execution of the agreements we complete. Therefore, on some level this Williams-Paris v Joseph case ought to be reassuring to drafters that if this premarital agreement can be enforced, almost anything can. However, don't forget the Bates v Bates case decided by the 3rd DCA earlier this year….it is a reminder that not all documents signed close in time to the marriage will be upheld and enforced.

Imagine being involved in this case. What should one do if Arlene called counsel that morning from the Vineyard? What could an attorney advise her? There was no time. It was not possible under the circumstances for a lawyer to provide adequate representation. Indeed, there was certain malpractice risk for any attorney even willing to talk to Arlene (had she called), and such attorney's fate would likely have been worse had she or he been engaged to try to help in the case.

Maybe there is one easy lesson: no attorney should ever get involved in a premarital agreement presented and prepared under such circumstances (regardless of how much attorneys may be inclined to try to help our clients when in need). However, there is likely more.

Would an attorney called that am possibly say: "Listen, you can sign that agreement as it isn't worth the paper it is written (printed) on"? Would an attorney called by Arlene a year after the marriage and presented with the same document and the same story possibly say the same thing?

Surely, that is a comment we've all heard before. And on a quick, superficial look (especially in light of these facts), could we imagine that advice being uttered? Might that advice even be at least partially true? If there had been a divorce, it seems highly likely (perhaps indisputable) that this premarital agreement was not worth the paper it was printed on (again, however, that is in a divorce proceeding).

Thus, another lesson for attorneys is to be wary of such flippant advice. In reliance on that counsel, the client may sign the agreement and expect it to be voided one day. Or if the advice is received after marriage, the client may decide not to address a post-marital agreement.

Yet, as we saw, at least in this case and with respect to post-death rights, a possibly (maybe facially apparently) unenforceable agreement was indeed enforced.

Thus, whether it be premarital agreements or any other documents (one might imagine similar advice if a client came in and asked counsel to review a non-compete agreement with obviously over-broad restrictions and provisions), a good lesson learned is not to counsel clients that it is okay to sign documents simply because counsel thinks the documents are not going to be binding or counsel believes they will be overturned or found invalid. Such advice could be very damaging to our clients.

On the other hand, however, the decision does not give us much to really rely on. Hopefully, none of us prepare agreements on the morning of our clients' weddings. Hopefully, none of us would allow the documents we prepare to be executed without having been read and understood by the parties. Hopefully, none of us want our clients to have their fiancés sign premarital agreements without being reviewed by independent counsel to explain the terms to their fiancés. And I assume in most circumstances, drafters would only present these agreements with financial disclosures to ensure there are knowing and understood waivers.

Further, a drafter cannot hope to rely on this decision if the agreement was challenged in a divorce. In that context, the agreement (almost) assuredly would not have been upheld. So, if you are preparing marital agreements to withstand scrutiny both in the event of death and divorce (who isn't), perhaps little can really be gleaned from this holding and its decision to enforce this particular pre-nup.

From a technical perspective, the lex loci contractus arguments were interesting, and the concurring opinion was well stated. From a Florida law perspective, the homestead analysis is likely of interest. It is important to note the court's ruling that the express mention of the home and the oddly specific language regarding the agreement not impacting that home, over-rode the more generalized homestead wavier.

But for any reader of this case, the facts and result are likely to at least grab your attention.

If you are drafting prenuptial agreements, perhaps the best lesson may be a simple one, taken from Sgt. Esterhaus on Hill Street Blues: "Let's be careful out there!"

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Jeff Baskies

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CITES:

ARLENE WILLIAMS-PARIS, Appellant, v. APRIL NELLE JOSEPH, PRISCILLA PARIS-AUSTIN, THEODORE PARIS, and SAMUEL PARIS, Appellees; No. 4D20-1760; Florida Court of Appeals, Fourth District; September 1, 2021. (The decision is not yet final and the author does not know if there will be a request for rehearing or appeal); *Bates v. Bates*, 46 Fla. L. Weekly D287c (3rd DCA, February 3, 2021).

CITATIONS:

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