

“Honey, Here Is An Agreement For You To Sign And, If You Do, Then I Will Stay Married To You. Sound Fair Or Not?”

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Lisa Marie Presley and her husband, Michael Lockwood, are embroiled in a custody battle that has left their children being cared for by Priscilla Presley because of disturbing images being found on Lockwood's computer. While that may be an interesting blog in its own right, another unusual facet of their impending divorce is that a court must first rule on whether their post-nuptial agreement is valid.

Many have not heard of post-nuptial agreements, but those are the agreements spouses enter into after they have been married. A post-nuptial agreement can be made in a variety of circumstances. For instance, the parties had wanted to enter into a pre-nuptial agreement but “time got away from them before the wedding,” and so they want to enter into this agreement after the wedding. Or there has been trouble in the marriage, and one spouse wants to assure himself or herself that certain assets will remain in his or her name forever regardless of what happens in the future. A prime example is when one party wants the marital home, which is in his or her name (because it was his or hers before the marriage), to be exempt from any future claims of the other spouse.

These post-marriage agreements, even the agreement that would have been the “pre-nup” had they gotten around to it, are unlikely to be enforced. New Jersey courts treat pre-nuptial agreements and post-divorce settlement agreements differently than agreements entered into while the parties are married but have not filed for divorce. The circumstances surrounding the entry of each agreement places spouses in different bargaining situations vis-à-vis the other spouse. In a pre-nuptial agreement or a property settlement agreement entered into as a result of a pending divorce, the parties deal with each other at arm's length, usually with attorneys. In mid-marriage agreements, or reconciliation agreements where one spouse promises the other to reconcile in exchange for certain financial concessions, that arm's length condition is not present and, therefore, such agreements are viewed as potentially coercive.

The one spouse who does not want to be divorced and will do anything to keep the marriage together (i.e., promise anything such as giving up some financial rights) is pitted against the other spouse, who has been unhappy and wants concessions to stay married. New Jersey courts have said such agreements that include promises that are intended to induce reconciliation will only be enforced when the parties are on the brink of separation or a complaint for divorce has been filed.

The circumstances surrounding the entry of the Presley-Lockwood post-nuptial agreement are unknown, as is how California courts look upon such agreements. Certainly, the financial question is not only whether Lisa Marie will have to pay Lockwood support, but also whether there are assets to be divided. She claims she is deeply in debt because of the expenses of a property she owns in England and because she owes \$1,000,000 in back taxes. Her tax returns from last year showed that she received \$5,600,000 from her father's estate. She claims that Lockwood, who quit his career to assist her, has mismanaged her finances. The court did order her to pay Lockwood \$50,000 for his attorney but denied his request for \$40,000 a month in support. A California court will begin a hearing on April 10th to determine whether the agreement is enforceable before it addresses the question of whether she must pay him support or decide how to divide the assets.