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## 2001 Survey of Rhode Island Law: Cases: Family Law

Jill A. Taft

*Roger Williams University School of Law*

Christy Hetherington

*Roger Williams University School of Law*

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**Family Law.** *Janson v. Janson*, 773 A.2d 901 (R.I. 2001). Husband's eligibility to retire entitled wife to collect her share of husband's pension as if he had actually retired, and correct valuation of pension plan assets to be based on the date of the final divorce decree, not the date of the property-settlement agreement.

#### FACTS AND TRAVEL

On July 3, 1995, John H. Janson (husband) filed a marriage dissolution action against his wife, Patricia J. Janson (wife).<sup>1</sup> In January of 1998, the Jansons reached a property-settlement agreement, which in May of 1998 was embodied in an amended decision pending entry of a final judgment.<sup>2</sup> In addition to custody and visitation arrangements for a minor child, the agreement divided the husband's pension benefits so that the husband would retain sixty percent while the wife would be awarded forty percent.<sup>3</sup> The benefits would be disbursed to the parties pursuant to a qualified domestic relations order (QDRO).<sup>4</sup>

On July 6, 1999, the husband filed a motion seeking to enter the final judgment and to execute the QDRO.<sup>5</sup> Because the wife claimed that the husband was eligible to retire as of May 1999, the wife filed a motion to collect her portion of the pension benefits and also sought to extend the QDRO to cover benefits the husband earned from the inception of his employment through the date of the final judgment of divorce rather than the date of the property-settlement.<sup>6</sup> Following the arguments of counsel, the family court granted the husband's motion and entered the final judgment of divorce and QDRO on August 3, 1999, but the court did not rule on the wife's motion.<sup>7</sup> Following this judgment the wife filed a timely notice of appeal.<sup>8</sup>

On appeal, the supreme court remanded the matter to the Family Court because that court did not address the wife's motion to expand the QDRO.<sup>9</sup> On remand, the family court denied the

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1. *Janson v. Janson*, 773 A.2d 901, 902 (R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

wife's motion and the wife again appealed, arguing that the family court's refusal to address her motion and its order to execute the QDRO was reversible error.<sup>10</sup>

#### ANALYSIS AND HOLDING

The wife argued that she was entitled to her share of the pension benefits because the husband became eligible for retirement and acquired the right to collect pension benefits in May 1999, a right he did not possess on the date of the property-settlement agreement.<sup>11</sup> Since the property-settlement agreement was silent as to the date the wife would be eligible to begin collecting the pension benefits, the supreme court found that the family court should have made a determination of the correct date. The trial court should make this determination based upon a reading of the unambiguous portions of the property-settlement agreement and principles of equitable distribution. The court was critical of the trial court's failure to address the date of benefit distribution without either explanation or justification.<sup>12</sup>

Relying on two previous decisions, the court held that an employee/spouse could not deprive a non-employee/spouse a portion of a property-settlement once the family court had decided to award the non-employee/spouse that property.<sup>13</sup> Secondly, the Family Court had the authority to distribute to the non-employee/spouse an equitable share of monthly pension benefits equal to what the employee/spouse would have received if that spouse had retired.<sup>14</sup> The sum of those holdings indicated that in the Janson's case, the wife was rightly entitled to receive her share of pension benefits as if the husband had retired in May 1999, when he became eligible to do so.<sup>15</sup>

The wife also contended that the pension should be valued from the date her husband commenced his employment through the date of the final judgment of divorce, not the date the property-settlement was entered, as the trial judge had found.<sup>16</sup> Agreeing

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10. *Id.* at 903.

11. *Id.*

12. *Id.*

13. *Id.* at 904 (citing *Furia v. Furia*, 638 A.2d 548, 553 (R.I. 1994)).

14. *Id.* at 903 (citing *Furia v. Furia*, 692 A.2d 327, 328 (R.I. 1997)).

15. *Id.*

16. *Id.* at 904-05.

with the wife's argument, the supreme court held that from the date of the property-settlement to the date of the final judgment of divorce, the parties were still married and therefore maintained a continuing interest in each other's estate.<sup>17</sup> Because the settlement agreement contained no stipulation to the contrary, the correct valuation of the pension shares was from the time the employee spouse commenced employment to the time the parties were officially divorced.<sup>18</sup>

#### CONCLUSION

The Rhode Island Supreme Court, vacating and remanding the decision of the family court, held that the date on which the wife should begin to receive her portion of her husband's pension benefits was the date on which he was first eligible to retire. Secondly, the correct valuation of the pension as a whole was the duration of the husband's employment through the date of the final judgment of divorce.

Jill A. Taft

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17. *Id.*

18. *Id.*

**Family Law.** *Rubino v. Rubino*, 765 A.2d 1222 (R.I. 2001). The Rhode Island Supreme Court reversed the family court's granting of a divorce order and held that the equitable distribution statute, and not an antenuptial agreement, determines the rights and liabilities of the parties. The supreme court held that ex-wife had not abandoned her rights under the antenuptial agreement and that the terms of the agreement still governed despite her filing a motion for temporary orders and accepting cash from the parties' joint account as an advance equitable distribution of marital assets.

#### FACTS AND TRAVEL

Michael (plaintiff) and Donna (defendant) Rubino were married on December 19, 1997, just two days after executing an antenuptial agreement.<sup>1</sup> The agreement provided that in the event of divorce all assets acquired by the parties as joint tenants would be divided equally between the parties.<sup>2</sup> Individually owned assets and any future individual acquisitions would remain the sole property of that individual only.<sup>3</sup> Additionally, the agreement required plaintiff to transfer certain assets to himself and defendant jointly, and to add defendant as a beneficiary on certain accounts and policies.<sup>4</sup> Both parties expressly waived all rights to alimony and temporary support or allowances pending a hearing for divorce or other proceeding.<sup>5</sup> By the terms of the antenuptial agreement, any modification or waiver of any provisions of the agreement would be effective only if executed in writing with the same formality as the original.<sup>6</sup>

Approximately two months after his marriage to defendant, plaintiff filed a petition for absolute divorce.<sup>7</sup> Plaintiff sought an equitable distribution of the assets of the marriage in accordance with the equitable distribution statute.<sup>8</sup> Defendant answered and counterclaimed, seeking the same equitable distribution of the assets per the statute.<sup>9</sup> Defendant filed a motion for a temporary

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1. *Rubino v. Rubino*, 765 A.2d 1222, 1223 (R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*; see R.I. Gen. Laws § 15-5-16.1 (2001).

9. *Id.*

restraining order (TRO) and temporary allowances on the same day. It was only in this motion for the TRO that the antenuptial agreement was mentioned and no request was made to enforce the agreement's provisions by either party at this time.<sup>10</sup>

Prior to the Family Court divorce proceeding of January 6, 1999, various orders were signed restraining both parties from assaulting, molesting, or threatening each other, and from alienating, selling, or encumbering certain assets.<sup>11</sup> Plaintiff was ordered to withdraw \$5,000 from a mutual account and to advance that money to defendant as an advance on her award of equitable distribution.<sup>12</sup> Also prior to the divorce proceeding, defendant filed a complaint in the Superior Court requesting specific performance of the antenuptial agreement, however a Family Court justice ordered this dismissed; subsequently, defendant filed an amended counterclaim in the Family Court seeking the same.<sup>13</sup>

The sole issue at trial was whether the respective property rights of the parties should be determined in accordance with the equitable distribution statute or the antenuptial agreement signed by the parties. In a motion *in limine*, plaintiff argued that defendant was precluded from asserting rights under the antenuptial agreement because she had accepted an advance payment based upon her statutory right to equitable distribution, thereby waiving her right to enforce the agreement.<sup>14</sup> Despite initial support in favor of defendant at trial, the Family Court justice later concluded in a bench decision that defendant was precluded from enforcing the provisions of the agreement because she accepted monetary support as an advancement on equitable distribution and did so one month after filing her counterclaim to enforce the contract.<sup>15</sup> The justice found defendant's actions to be in total violation of the intent, spirit, and wording of the contract. In the divorce order, no assets were distributed to either party due to the brevity of the marriage, however, the court upheld the defendant's \$5,000 award.<sup>16</sup>

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10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 1224.

15. *Id.*

16. *Id.*

## ANALYSIS AND HOLDING

On defendant's appeal, the Rhode Island Supreme Court determined that the trial justice erred in concluding that defendant had abandoned her rights under the antenuptial agreement due only to her actions of filing a motion for, and accepting, \$5,000 as an advance equitable distribution of marital assets.<sup>17</sup> The supreme court looked to the Uniform Premarital Agreement Act (Act)<sup>18</sup> and issues of statutory construction for guidance.

While the Act does not address the abandonment issue raised by defendant, it does provide that an antenuptial agreement is enforceable unless the party against whom enforcement is sought proves *all* of the enumerated elements of the Act, §§ 15-17-6(a)(1) and (2), and does so by clear and convincing evidence.<sup>19</sup> Additionally, § 15-17-5 of the Act provides that after marriage, antenuptial agreements may only be amended or revoked by a written and signed agreement.<sup>20</sup> Based on accepted methods of statutory construction such as examining the Act's provisions in their entirety, attributing to the Act the meaning most consistent with the policies and purposes of the Legislature,<sup>21</sup> and giving words their plain and ordinary meanings,<sup>22</sup> the supreme court found the agreement

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17. *Id.* at 1225.

18. *Id.* at 1224-25. As codified in section 15-17-6, the Act provides that an antenuptial agreement is enforceable unless the party against whom enforcement is sought proves that:

(1) That party did not execute the agreement voluntarily; and (2) The agreement was unconscionable when it was executed and, before execution of the agreement, that party: (i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; (ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and (iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party. (b) The burden of proof as to each of the elements required in order to have [an antenuptial] agreement held to be unenforceable shall be on the party seeking to have the agreement declared unenforceable and must be proven by clear and convincing evidence.

R.I. Gen. Laws § 15-17-6 (2001).

19. *Id.* at 1225.

20. *Id.*

21. *Id.* (citing *Commercial Union Insurance v. Pelchat*, 727 A.2d 676, 681 (R.I. 1999) (quoting *In re Advisory to the Governor (Judicial Nominating Commission)*, 668 A.2d 1246, 1248 (R.I. 1996))).

22. *Id.* (citing *Pelchat*, 727 A.2d at 681 (quoting *Matter of Flastaff Brewing Corp.*, 637 A.2d 1047, 1050 (R.I. 1994))).

controlling. Of particular guidance was the case of *Penhallow v. Penhallow*,<sup>23</sup> in which the Rhode Island Supreme Court found that by enacting the specific provisions of the Uniform Premarital Agreement Act, the Legislature evidenced the intent to preserve the validity and maintain the integrity of premarital agreements.<sup>24</sup> Consequently, the party seeking to render the agreement unenforceable is faced with a great burden by having to meet all requirements of the Act.

The supreme court held that the antenuptial agreement, as governed by the Act, should determine the rights and liabilities of the parties, not the equitable distribution statute.<sup>25</sup> Furthermore, the plaintiff did not establish any elements required by the Act, nor was there evidence that the parties ever signed a written amendment or revocation to the original antenuptial agreement.<sup>26</sup> Contrary to the trial judge's determination, the defendant did not abandon her rights under this agreement despite both parties' use of boilerplate language regarding equitable distribution.<sup>27</sup> Defendant made specific attempts to enforce her rights under the agreement both in Superior and Family Court. Therefore, the Supreme Court sustained the defendant's appeal, reversed the Family Court judgment, and remanded the case to enforce the parties' antenuptial agreement.<sup>28</sup>

#### CONCLUSION

The Rhode Island Supreme Court reversed a Family Court decision that the rights and liabilities of a divorcing couple were governed by the equitable distribution statute rather than an antenuptial agreement. Despite filing a motion for temporary orders and accepting \$5,000 from parties' joint account as an advance equitable distribution, the ex-wife did not abandon her rights under the antenuptial agreement. The ex-husband failed to establish any of the elements required under the Uniform Premarital Agreement Act to render the agreement unenforceable, the parties never signed a written agreement to revoke or amend the

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23. 649 A.2d 1016, 1021 (R.I. 1994).

24. *Rubino*, 765 A.2d at 1225.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 1226.

agreement, and the ex-wife had made specific attempts to enforce her rights under the agreement.

Christy Hetherington