

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

Robert H. Gross

Petitioner

v.

Jeanine Emma Dannatt

Respondent

On Petition For Writ of Certiorari

To the Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

Robert H. Gross
#28352077
FCI – Big Spring
1900 Simler Avenue
Big Spring, TX 79720

QUESTIONS PRESENTED FOR REVIEW

This is a civil divorce case, which involves a prenuptial agreement. The prenuptial agreement was presented in discovery and constituted a judicial admission in the trial court. However, it was never presented in the final divorce hearing but was presented on appeal to the Court of Appeals.

- I. Can a Texas Court refuse to give full faith and credit and not honor a Pennsylvania Court Order?

- II. Does an oral consent to judgment waive a Prenuptial Agreement that is protected under the 5th and 14th Amendments by the Statute of Frauds and the Texas Family Code Section 4.005?

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CITATIONS OF OPINIONS

1. District Court, 391st Judicial District, Tom Green County, Texas,
Cause No. D140717F
2. Court of Appeals, Thirteenth District of Texas, Corpus Christi -
Edinburg, No. 13 -15-00309-CV, Mem. Opinion

STATEMENT OF JURISDICTION

1. The Texas Trial Court on May 4, 2015 issued a final divorce decree.
2. On June 22, 2017, the Court of Appeals affirmed the Trial Court's decision
3. On December 8, 2017, the Texas Supreme Court denied to review
4. Under the Rules of the Supreme Court 10(c), this Court has jurisdiction to review on a writ of certiorari.

CONSTITUTIONAL STATUES

Article 4, Section 1, Full Faith and Credit

Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

AMENDMENT 5

No Person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any crime case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14 Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the Sate wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a civil divorce action. On May 3, 2005, a prenuptial agreement was signed by both parties. The prenuptial agreement states, “The Laws of the Commonwealth of Pennsylvania will govern the interpretation of this agreement, and the status, ownership, and division of property between the parties wherever either or both of them may from time to time reside.” (Exhibit 5 at 5).

In the Pennsylvania statute section titled, Domestic Relations, 23 Pa. C.S.A 3105, it states, “A party to an agreement regarding matters within the jurisdiction of the court under this party whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this part to enforce the agreement to the same extent as though the agreement had been an order of the court...” (Exhibit 9).

The prenuptial agreement was presented into evidence and constituted a judicial admission in District Court (Exhibit 3 at 3). The prenuptial agreement was also presented in Appellant’s Brief (Exhibit 6 at 25) and Reply Brief (Exhibit 7) in the Court of Appeals.

Appellant’s Reply Brief also stated, an oral consent to judgment violated Texas Family Code 4.005, which states, “After marriage, a prenuptial agreement may be amended or revoked only in written agreement signed by both parties.” The Court of Appeals ruled on June 22, 2017 that an oral consent to judgment waives the validity of the prenuptial agreement. “Therefore, because Appellant agreed to

the divorce decree regarding the complained of property, he has waived error if any”
(Exhibit 2 at 3).

The federal question that an oral consent violates the 5th and 14th
Amendments was raised timely and properly in the Court of Appeals.

The federal question whether an order from a Pennsylvania Court should be
credited in a Texas Court was timely and properly raised in the Petition For Review
to the Texas Supreme Court (Exhibit 8). The Texas Supreme Court denied to
review on December 8, 2017.

ARGUMENT

I. THE TEXAS COURT REFUSED TO GRANT FULL FAITH AND CREDIT TO A PENNSYLVANIA COURT ORDER

The Texas Court of Appeals erred in a mistake of law when they did not give full faith and credit to an 'order of the Pennsylvania Court.' 23 Pa. C.S.A 3105 states, "A party to an agreement regarding matters within the jurisdiction of the court under this part whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this part to enforce the agreement to the same extent as though the agreement had been an order of the court..." (23 Pa. C.S.A. 3105).

Under the Constitution, Article IV, Section 1, Full Faith and Credit Clause, a Texas Court must give full faith and credit to this prenuptial agreement and treat it as an order from the Court. "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof" (Constitution, Article 4, Section 1) See Exxon Mobil v. Saudi Basic Indus., 544 U.S. 280, 293, 161 L. Ed. 2d 454, 125 S. Ct. 1512 (2005).

The parties entered into a prenuptial agreement on May 3, 2005. The prenuptial agreement states, "The Laws of the Commonwealth of Pennsylvania will govern the interpretation of this agreement, and the status, ownership, and division of

property between the parties wherever either or both of them may from time to time reside” (Exhibit 5 at 5).

The prenuptial agreement was not given its full weight and credit in the Texas Court system. The Texas Trial Court and Court of Appeals erred in their decisions granting the final divorce settlement decree without consideration of a prenuptial agreement.

The prenuptial agreement was first presented in discovery and constituted a judicial admission to the Texas District Court. “A judicial admission establishes the issue in dispute as a matter of law on behalf of the adversary of the one making such admission. *Valdes v. Moore*, 476 SW2d. 936 (Tex. Civ. App. - - Houston [14th Dist] 1972, writ. Ref. n.r.e.)” *Rivera v. Hernandez*, 441 SW 3d. 413, 420-21, (Tex. App – El Paso, 2014). Further, the District Court took judicial notice of the prenuptial agreement, which was filed and admitted into evidence. (See Exhibit 3). The prenuptial agreement was also presented as Issue 3 in Appellant’s initial Brief in the Court of Appeals (Exhibit 6 at 25), in Appellant’s Reply Brief, (Exhibit 7), presented in an affidavit to the Court of Appeals under Tex. R. App. P. R. 52.7(b), and the Appendix of Petition for Rehearing with Suggestion for Rehearing En Banc. Yet the Court of Appeals did not recognize and made no mention of the prenuptial agreement in their decision.

The Texas Courts refused to honor a Pennsylvania Court order violating Article 4 Section 1 of the Constitution. The Texas Courts should have given full faith and credit to this prenuptial agreement.

**II. THE PRENUPTIAL AGREEMENT IS PROTECTED UNDER THE
5TH AND 14TH AMENDMENTS BY THE STATUTE OF FRAUDS
AND TEXAS FAMILY CODE 4:005**

An oral consent to judgment does not waive the validity of the prenuptial agreement. The Court of Appeals erred in stating an oral consent to judgment constitutes a written waiver making the prenuptial agreement invalid.

This goes against the 5th and 14th Amendments denying a person's due process and equal protection under the laws of the United States. The oral consent to judgment is in violation of the Statute of Frauds, Texas Family Code 4.005, and the prenuptial agreement.

The Statute of Frauds is a statute that declares certain contracts judicially unenforceable if they were not committed to writing and signed by the party to be charged. (contracts made in consideration of marriage). "When a written agreement is governed by the Statute of Frauds, it can not be materially modified by a subsequent oral agreement." Dracopoulos v. Rachal, 411 SW2d, 719, 721 (Tex. 1967).

Additionally, under the Texas Business and Commerce Code 26, a contract concerning a marriage must be in writing and signed by both parties

and governed by the SOF (Tex. Business and Commerce Code Section 26).

Further, an oral consent to judgment violates Texas Family Code 4.005, which states, “After marriage, a prenuptial agreement may be amended or revoked only in a written agreement signed by both parties.” (Texas Fam. Code Section 4.005).

Also, the prenuptial agreement itself states, “This agreement cannot be terminated or amended except by the parties in writing signed by both of them.” (Exhibit 5 at 5).

During the Trial Court hearing, the Petitioner entered in to an oral consent of judgment in which he thought was one settlement agreement but turned out to be another. Petitioner neither read nor signed nor knew of this new agreement’s existence until after the final divorce hearing on May 4, 2015. The case was appealed to the Court of Appeals.

The Court of Appeals ruled that an oral consent to judgment waives a prenuptial agreement. The Court of Appeals stated, “Because Appellant agreed to the divorce decree regarding the complaint of property, he has waived error if any.” See Baw v. Baw, 949 S. W. 2d 764, 766 (Tex. App. – Dallas 1997, no pet.) (“A party’s consent to the trial court’s entry of judgment waives any error, except for jurisdictional error, contained in the judgment, and that party has nothing to properly present for appellate review.”) (Exhibit 2 at 3).

An oral consent is a violation of the 5th and 14th Amendments of the

Constitution. An oral consent either by the record or judgment that waives a prenuptial agreement goes against the Texas Supreme Court opinion in Dracopoulos. The Court held, under the Statute of Frauds, a written agreement can not be modified either by an oral consent on the record or judgment. Dracopoulos, 411 S. W. 2d at 721. Further, the Texas Family Code Section 4.005 and the prenuptial contract require a written waiver to invalidate a prenuptial agreement and protect the private rights of an individual. Thus, an oral consent to judgment should not waive a prenuptial agreement.

PRAYER FOR RELIEF

Petitioner respectfully prays that this Court remand this case to the District Court with consideration of a valid prenuptial agreement.

Respectfully submitted,

Date 12/8/18

Robert Gross

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this petition was emailed to Dana Banks, Counsel of Record (dbanks@smithrose.com) on December 7, 2018.

Robert Gross

Robert Gross, Pro Se