

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 25, 2013 Session

Gary Rickman v. Virginia Rickman, et al

**Appeal from the Chancery Court for Warren County
No. 11733 Larry B. Stanley, Jr., Chancellor**

No. M2013-00251-COA-R3-CV - Filed October 15, 2013

This case concerns whether the widow of a deceased man may share in the wrongful death settlement obtained by his personal representative. We conclude that the postnuptial agreement entered into by the widow prevents her from benefitting from the wrongful death settlement. Affirmed and remanded.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed and Remanded

J. STEVEN STAFFORD, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

Trenena G. Wilcher and Eric J. Burch, Manchester, Tennessee, for the appellant, Virginia Rickman.

Darren V. Berg, Knoxville, Tennessee, for the appellees, Gary Rickman, William Rickman, Jr., Gary Rickman, Jr., Tony Childers, and Chris Childers.

OPINION

I. Background

William E. Rickman, Sr. (“the decedent”) and Defendant/Appellant Virginia Rickman (“Widow”) were married on September 9, 1987. Both parties had previously been married and had children from their prior relationships. Approximately fourteen years after the marriage began, on August 7, 2001, Widow and the decedent entered into a postnuptial

agreement, in which both parties waived their rights to the property of the other spouse. Specifically, the postnuptial agreement provided that:

1. *Release of marital rights.* Each party hereby waives and releases all rights including, but not limited to statutory allowance; distributive share; right of election against Will; alimony; and all other rights which they may have acquired by reason of their marriage.
2. Each of the parties own their own real estate and personal belongings and agree to make no claim whatsoever on the others [sic] real estate or personal belongings. The parties further acknowledge that they make no claims on the others [sic] bank accounts or other monetary assets.
3. *Wills.* Each of the parties is free to make a Will devising their property to their own children or otherwise. The other party to this agreement will make no claim upon the property transferred thereby.

This agreement shall become effective upon its execution and shall bind the parties, their respective heirs, executors, administrators, and assigns.

This agreement contains the understanding of the parties and no representations or promises have been made except those set forth herein.

The decedent died in 2010. His Estate was closed by virtue of an agreed order entered on January 28, 2011, in which Widow agreed that she was not entitled to any of the estate assets due to the postnuptial agreement. The consent order provided, in pertinent part:

It is further the finding of this Court that each, every, and all rights, claims[,] demands and interests of every nature in and to the Estate of [the decedent], whether in Tennessee, West Virginia and elsewhere which can and/or could be claimed by [Widow] in and to any of the assets of the Estate of the decedent have been waived and forfeited by [Widow] and that she shall not, and does not inherit and will not be allowed to inherit from the decedent's estate nor will she be allowed to be Administratrix nor take part in the probating of said Estate.

It is further the finding of this Court that any and all rights of action, demands, suits at law, equity, and/or otherwise known and unknown which [Widow] can and/or could file

against Plaintiffs individually and/or in any capacity whatsoever and/or against Estate of [the decedent] in Tennessee, West Virginia or elsewhere of any nature have been waived and forfeited by [Widow] and are herein forever compromised, settled, and concluded herein.

* * *

This Court finds that all of the above to be proper, fair, and reasonable to [Widow], and follows the law as applicable herein, it [] hereby Orders that:

* * *

2. Inasmuch as the [Post]nuptial Agreement . . . filed in this matter and signed August 7, 2001 by [Widow] and decedent, [Widow] waived and forfeited each, every, and all of her rights and interest in and to the Estate of decedent, she shall not be entitled to receive anything in inheritance or otherwise, of any nature from the Estate of [the decedent][.] [S]he shall also not be allowed to file any claims of any nature against this Estate and the assets of this Estate[.] [S]he shall not participate in the administration of this Estate and the [d]ecedent[']s Estate shall pass equally to all Plaintiffs.

The order was signed by both Widow and her attorney.

Thereafter, on July 11, 2011, Plaintiff/Appellee Gary Rickman (“Mr. Rickman”), as administrator of the decedent’s estate, filed a wrongful death suit against NHC Healthcare McMinnville, *et al.* relative to the decedent’s death. The matter was settled out of court on March 27, 2012. Upon settlement of the wrongful death action, Mr. Rickman filed the instant petition seeking a Declaratory Judgment to determine the proper distribution of the settlement proceeds among the parties, naming as defendants Widow, as well as Defendant/Appellees, William Rickman, Jr., Gary Rickman, Jr., Tony Childers, and Chris Childers (collectively, and together with Gary Rickman “Appellees”). On October 11, 2012, Tony Childers and Chris Childers filed a Motion for Judgment on the Pleadings, asking the trial court to declare that Appellees were the only parties who could take from the proceeds of the settlement. On November 26, 2012, Widow responded to the pending motion, which she categorized as a Motion for Summary Judgment. On December 4, 2012, the trial court granted the pending

motion, and the request for a Declaratory Judgement. The trial court concluded that Widow could not benefit from the settlement due to her prior agreements. The trial court specifically found that all parties agreed that the postnuptial agreement was a “valid and enforceable contract.” The trial court went on to distribute the proceeds of the settlement to the Appellees.¹ Widow appeals, raising the following issues, which we alter slightly from Widow's brief:

1. Whether the trial court erred in finding that the postnuptial agreement precluded Widow from receiving any portion of the proceeds from her husband’s wrongful death action?
2. Whether the trial court erred in finding that the agreed order entered into on January 28, 2011 constituted a waiver of Widow’s interest in the proceeds from her husband’s wrongful death action?

II. Standard of Review

In this case, the Appellees filed a Motion for Judgment on the Pleadings, asserting that Widow was not entitled to any portion of the proceeds from the wrongful death action. In granting the Motion, the trial court considered the effect of Widow’s previous agreements on her right to benefit from the decedent’s estate. When the trial court considers matters outside the pleadings in granting a motion to dismiss or a motion for judgment on the pleadings, the motion is treated as one for summary judgment. *See Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976); *see also* Tenn. R. Civ. P. 12.02 (“If, on a motion . . . to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . .”).

A trial court’s decision to grant a motion for summary judgment presents a question of law. Our review is therefore *de novo* with no presumption of correctness afforded to the trial court’s determination. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). This Court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Abshure v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 103 (Tenn. 2010).

When a motion for summary judgment is made, the moving party has the burden of

¹ None of the Appellees have appealed the trial court’s ultimate distribution of the wrongful death proceeds.

showing that “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The moving party may accomplish this by either: (1) affirmatively negating an essential element of the non-moving party’s claim; or (2) showing that the non-moving party will not be able to prove an essential element at trial. *Hannan v. Alltel Publ’g Co.*, 270 S.W.3d 1, 8–9 (Tenn. 2008). However, “[i]t is not enough for the moving party to challenge the nonmoving party to ‘put up or shut up’ or even to cast doubt on a party’s ability to prove an element at trial.” *Id.* at 8. If the moving party’s motion is properly supported, “The burden of production then shifts to the nonmoving party to show that a genuine issue of material fact exists.” *Id.* at 5 (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). The non-moving party may accomplish this by: “(1) pointing to evidence establishing material factual disputes that were overlooked or ignored by the moving party; (2) rehabilitating the evidence attacked by the moving party; (3) producing additional evidence establishing the existence of a genuine issue for the trial; or (4) submitting an affidavit explaining the necessity for further discovery pursuant to Tenn. R. Civ. P., Rule 56.06.” *Martin v. Norfolk Southern Railway. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citations omitted).

When reviewing the evidence, we must determine whether factual disputes exist. In evaluating the trial court’s decision, we review the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in the nonmoving party’s favor. *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003). If we find a disputed fact, we must “determine whether the fact is material to the claim or defense upon which summary judgment is predicated and whether the disputed fact creates a genuine issue for trial.” *Mathews Partners*, 2009 WL 3172134 at *3(citing *Byrd*, 847 S.W.2d at 214). “A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed.” *Byrd*, 847 S.W.2d at 215. A genuine issue exists if “a reasonable jury could legitimately resolve the fact in favor of one side or the other.” *Id.* “Summary Judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion.” *Landry v. South Cumberland Amoco, et al*, No. E2009-01354-COA-R3-CV, 2010 WL 845390, at *3 (Tenn. Ct. App. March 10, 2010) (citing *Carvell v. Bottoms*, 900 S.W.2d 23 (Tenn. 1995)).

III. Analysis

The sole issue in this case involves the effect, if any, of Widow’s agreements prior to and after the decedent’s death on her ability to collect from the wrongful death settlement obtained on behalf of the decedent. It is undisputed that Widow was not entitled to any of the decedent’s property at his death as a result of the postnuptial agreement. However, Widow now argues that she is entitled to take her intestate share of the wrongful death settlement.

We begin with a brief discussion of antenuptial and postnuptial agreements in general. We note that although the parties refer to the agreement between Widow and the decedent as an “antenuptial agreement,” the agreement was entered into after Widow and the decedent were married. Thus, the agreement at issue is more properly termed a “postnuptial agreement.” Generally, in Tennessee, both antenuptial and postnuptial agreements are valid and enforceable when entered into voluntarily, for consideration, and with full knowledge of the other party’s assets. *See generally Bratton v. Bratton*, 136 S.W.3d 595 (Tenn. 2004). With regard specifically to postnuptial agreements, the Tennessee Supreme Court has opined:

Generally, postnuptial agreements will be treated in the same manner as antenuptial and reconciliation agreements. That is to say, they should be interpreted and enforced as any other contract. All contracts must be supported by adequate consideration, and agreements between spouses or potential spouses are no exception. As a general rule, consideration for a contract may be either a benefit to the promisor or a detriment to, or an obligation upon, the promisee. *See Brown Oil Co. v. Johnson*, 689 S.W.2d 149, 151 (Tenn. 1985). Marriage itself is sufficient consideration for a prenuptial agreement. *See Spurlock v. Brown*, 91 Tenn. 241, 18 S.W. 868, 871 (1892); *Sanders v. Sanders*, 40 Tenn.App. 20, 288 S.W.2d 473, 477 (1955). Similarly, reconciliation in the face of an impending separation or divorce may be adequate consideration. *See, e.g., Gilley v. Gilley*, 778 S.W.2d 862, 864 (Tenn. Ct. App. 1989). However, with a postnuptial agreement, the marriage itself cannot act as sufficient consideration because past consideration cannot support a current promise. *See S.M. Williamson & Co. v. Ragsdale*, 170 Tenn. 439, 95 S.W.2d 922, 924 (1936). Therefore, there must be consideration flowing to both parties as part of a postnuptial agreement.

Additionally, part of a postnuptial agreement must be built-in safeguards to protect from fraud, coercion or undue influence due to the confidential relationship between the parties to the contract. Tennessee Code Annotated section 36-3-501 (2001) requires that in order to be enforceable, antenuptial agreements must be entered into freely, knowledgeably, in good faith, and without the exertion of duress or undue influence. This Court has explained the need for such safeguards with respect to antenuptial agreements as follows: “An engagement to marry creates a confidential relation between the contracting

parties and an antenuptial contract entered into after the engagement and during its pendency must be attended by the utmost good faith. . . .” *Baker v. Baker*, 24 Tenn. App. 220, 142 S.W.2d 737, 745 (1940).

Because of the confidential relationship which exists between husband and wife, postnuptial agreements are likewise subjected to close scrutiny by the courts to ensure that they are fair and equitable. *See, e.g., Peirce v. Peirce*, 994 P.2d 193 (Utah 2000); *In re Estate of Gab*, 364 N.W.2d 924 (S.D. 1985); *In re Estate of Harber*, 104 Ariz. 79, 449 P.2d 7 (1969); *see also* 41 C.J.S. Husband & Wife § 87 (1991) (“Since a husband and wife do not deal at arm's length, a fiduciary duty of the highest degree is imposed in transactions between them.”). As explained by the court in *Estate of Gab*,

While it is lawful and not against public policy for husband and wife to enter into such contracts, yet they are not dealing with each other as strangers at arm's length. The relationship of husband and wife is one of special confidence and trust, requiring the utmost good faith and frankness in their dealings with each other.... Transactions of this character are scrutinized by the courts with great care, to the end that no unjust advantage may be obtained by one over the other by means of any oppression, deception, or fraud. Courts of equity will relieve against any unjust advantage procured by any such means, and less evidence is required in such cases to establish the fraud, oppression, or deception than if the parties had been dealing at arm's length as strangers

364 N.W.2d at 926 (quoting *Keith v. Keith*, 37 S.D. 132, 156 N.W. 910, 911 (1916)).

Bratton, 136 S.W.3d at 600–01. There is no dispute that Widow and the decedent entered into the postnuptial agreement voluntarily and without undue influence, with full knowledge

of the other party's property, and for valuable consideration.² Accordingly, the postnuptial agreement in this case is valid and may be enforced according to contract principles. *See id.*; *In re Estate of Wiseman*, 889 S.W.2d 215, 217 (Tenn. Ct. App.1994); *Gilley v. Gilley*, 778 S.W.2d 862, 863 (Tenn. Ct. App. 1989). Furthermore, because postnuptial agreements “should generally be governed by the same principles” as antenuptial agreements, *see Gilley*, 778 S.W.2d at 863, postnuptial agreements are “favored by public policy” and “are construed liberally to give effect to the intention of the parties.” *Reed v. Reed*, No. M2003-02428-COA-R3CV, 2004 WL 3044904, at *6 (Tenn. Ct. App. Dec. 30, 2004) (citing *Sanders v. Sanders*, 288 S.W.2d 473, 477 (Tenn. Ct. App. 1955)). Thus, the familiar principles of contract construction apply in this case.

“The interpretation of written agreements . . . is a matter of law that this Court reviews *de novo* on the record according no presumption of correctness to the trial court's conclusions of law.” *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006). In interpreting a contract, our “initial task is to determine whether the language in the contract is ambiguous.” *Ray Bell Constr. Co. v. Tenn. Dep't of Transp.*, 356 S.W.3d 384, 387 (Tenn. 2011). “The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern. The intent of the parties is presumed to be that specifically expressed in the body of the contract.” *Planters Gin Co. v. Fed. Compass & Warehouse Co.*, 78 S.W.3d 885, 890 (Tenn. 2002) (internal citation omitted). As our Supreme Court has recently explained:

We are guided by well-settled principles and general rules of construction. “A cardinal rule of contractual interpretation is to ascertain and give effect to the intent of the parties.” *Allmand*, 292 S.W.3d at 630 (citing *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn.2006)). We initially determine the parties' intent by examining the plain and ordinary meaning of the written words that are “contained within the four corners of the contract.” The literal meaning of the contract language controls if the language is clear and unambiguous. However, if the terms are ambiguous in that they are “susceptible to more

² The parties in this case both agreed to waive their rights to a statutory elective share. This Court has previously held that such an agreement is sufficient consideration for a postnuptial agreement. *See In re Estate of Wiseman*, 889 S.W.2d 215 (Tenn. Ct. App. 1994) (holding that a mutual waiver of the statutory right to an elective share of her deceased spouse's estate, contained in a postnuptial agreement, was sufficient consideration for the agreement); *see also Rodgers v. Southern Newspapers, Inc.*, 214 Tenn. 335, 379 S.W.2d 797, 800 (Tenn. 1964) (holding that mutual promises between the parties to a contract provide “ample consideration” for the contract).

than one reasonable interpretation,” we must apply other established rules of construction to aid in determining the contracting parties' intent. The meaning of the contract becomes a question of fact only if an ambiguity remains after we have applied the appropriate rules of construction.

Dick Broad. Co. v. Oak Ridge FM, Inc., 395 S.W.3d 653, 659 (Tenn. 2013) (internal citations omitted).

The specific issue in this case concerns Widow's ability to take from the proceeds of the wrongful death settlement. Proceeds from a wrongful death action are not property of the decedent's estate but instead pass outside the estate through the operation of the intestacy statutes:

“[I]t is the law in Tennessee that the proceeds from a wrongful death action become personal property of the deceased and the court will look to the statutes on distribution of personalty as a guide. *Anderson v. Anderson*, 211 Tenn. 566, 366 S.W.2d 755 (1963). The proceeds from a wrongful death action cannot pass under the will of the deceased. *Haynes v. Walker*, 111 Tenn. 106, 76 S.W. 902 (1903).

Foster v. Jeffers, 813 S.W.2d 449, 452 (Tenn. Ct. App. 1991); *see also PST Vans, Inc. v. Reed*, Nos. 03A01-9901-CV-00113, E1999-01963-COA-R3-CV, 1999 WL 1273517, at *2 n.6 (Tenn. Ct. App. Dec. 28, 1999) (proceeds of a wrongful death action are to be distributed in accordance with the intestacy statutes).

The Appellees argue that the postnuptial agreement entered into by Widow clearly and unambiguously waives her right to collect from the wrongful death proceeds. Specifically, the Appellees point to the language in the agreement in which Widow purports to waive “all other rights which they may have acquired by reason of their marriage.” According to the Appellees, because Widow's entitlement to any wrongful death proceeds is based on her marriage to the decedent, the above quoted language clearly and unequivocally waived that right.

Widow disagrees and argues that the postnuptial agreement has no bearing on her ability to benefit from the wrongful death proceeds. To support her argument, Widow cites decisions from our Sister States for the proposition that a postnuptial agreement cannot waive a spouse's right to share in a wrongful death settlement. For example, in *Steele v. Steele*, 623 So.2d 1140 (Ala. 1993), the Alabama Supreme Court held that an “antenuptial property

agreement” did not foreclose the wife’s right to share in the wrongful death proceeds. *Id.* at 1141–42. The Court based its decision on the language of the agreement, as well as Alabama’s Wrongful Death Act. First, the Court noted that the agreement clearly did not “contemplate[]” a wrongful death settlement because “wrongful death proceeds are neither part of the decedent's estate nor a property right.” *Id.* at 1142. However, the language of the agreement is not quoted in the Opinion. In addition, the Court held that Alabama’s Wrongful Death Act clearly and unequivocally provided that the proceeds from a wrongful death action “must be distributed according to the statute of distributions.” *Id.* at 1141 (citing Ala. Code. Ann. § 6-5-410(c)). Because the statute was unambiguous, the Court was unable to depart from its clear requirements.

Widow also cites the Mississippi Court of Appeal’s decision in *In re Estate of Burns*, 31 So.3d 1227 (Miss. Ct. App. 2009). In *Burns*, husband and the decedent wife entered into an antenuptial agreement that provided that:

Each of the parties hereto agree that on the death of the other, the surviving party will not have and will not in any way assert any claim, interest, estate or title of any kind or nature whatsoever in or to any property, real, personal, or mixed, of which the other party may die seized and possessed. . . .

Id. at 1230. After wife’s death in an automobile accident, one of wife’s children filed a wrongful death suit. The case resulted in a settlement. The trial court concluded that husband was entitled to his share of the wrongful death settlement, despite the above antenuptial agreement. *Id.* at 1228–29. The Mississippi Court of Appeals affirmed, concluding that the plain language of the above agreement only served to waive husband’s right to property owned by the decedent wife during her life. Because the wrongful death proceeds were not “seized and possessed” by wife during her life, and did not pass through her estate upon her death, the antenuptial agreement was found to have no bearing on the distribution of the wrongful death proceeds. *Id.* at 1230–31.

The situation in this case is quite different. First, we are unable to unequivocally conclude that wrongful death proceeds were not contemplated when Widow and the decedent entered into the postnuptial agreement, unlike in *Steele*. From our reading of the *Steele* Opinion, the antenuptial agreement at issue contemplated only the “decedent's estate” or “property right[s].” In addition, the agreement in *Burns* applied only to property “of which the other party may die seized and possessed.” The contract at issue in this case is far more broad. In addition to the property rights contemplated in the both the *Steele* agreement and the *Burns* agreement, the agreement in this case also includes a waiver of “all other rights which [the parties] may have acquired by reason of their marriage.” There can be no dispute

that Widow's right to receive the proceeds of the wrongful death settlement, if any, is a right that she acquired by reason of her marriage to the decedent. Thus, the agreement in this case is broad enough to encompass proceeds flowing from a wrongful death action.

In addition, while the distribution of wrongful death proceeds was governed solely by statute in *Steele*, that is not the case in Tennessee. See *Steele*, 623 So.2d at 1141. Tennessee's Wrongful Death Statute outlines who may bring a wrongful death action. See Tenn. Code Ann. § 20-5-110. However, it does not specify the distribution of the proceeds of the action. Instead, Tennessee courts have determined that the proceeds from a wrongful death action should pass as if through intestate succession. See generally *Foster*, 813 S.W.2d at 452. Accordingly, the Alabama Supreme Court's conclusion that it could not depart from the language of the Alabama Wrongful Death Act without some finding of ambiguity is not applicable in this case. In addition, we note that the law provides that a surviving spouse may waive his or her right to collect the proceeds of a wrongful death action by his or her action in abandoning the decedent spouse. See Tenn. Code Ann. § 20-5-107(c). While abandonment is not an issue, this statute evidences that a surviving spouse's right to collect the proceeds of a wrongful death action is not absolute and may be waived under appropriate circumstances. Furthermore, this Court has repeatedly held that a spouse may waive his or her statutory right to share in a deceased spouse's estate. See *Boote v. Shivers*, 198 S.W.3d 732 (Tenn. Ct. App. 2005) (upholding an antenuptial agreement in which wife waived all statutory rights to the property of the husband gained by virtue of the marriage); *Matter of Estate of Belew*, No. 03A01-9807-CH-00206, 1998 WL 881863 (Tenn. Ct. App. Dec. 17, 1998) (perm. app. denied May 10, 1999) (upholding an antenuptial agreement that contained a waiver of statutory rights); *In re Estate of Wiseman*, 889 S.W.2d 215 (Tenn. Ct. App. 1994) (holding that a mutual waiver of the statutory right to an elective share of her deceased spouse's estate, contained in a postnuptial agreement, was sufficient consideration for the agreement). We see no distinction between a waiver of the statutory right to an elective share and waiver of the right to share in the proceeds of a wrongful death action, so long as such waiver complies with the requirements of *Bratton*, discussed *supra*, and the waiver of such right is clearly contemplated by the parties.

Turning to the agreement at issue in this case, we must conclude that in signing the antenuptial agreement, Widow waived her right to share in the proceeds from the wrongful death action. Widow clearly agreed that in addition to waiving all rights to the decedent's property and estate as it existed at his death, she would waive "all other rights which they may have acquired by reason of their marriage." It is clear that by using this broad language that the parties intended that the marriage should have no effect on the spouse's respective property and statutory rights by reason of the marriage. We are constrained by the plain language of the agreement and cannot rewrite the parties' agreement to ameliorate this harsh result:

Courts defer to the contracting process by enforcing contracts according to their plain terms without favoring either contracting party. *Cocke County Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn.1985). Courts will decline to rewrite contracts made by the parties and will decline to relieve parties of their contractual obligations, absent an inability to contract or an unconscionable agreement. *Petty [v. Sloan]*, 197 Tenn. [630,] 640, 277 S.W.2d [355,] 359 [(Tenn. 1955)]; *Jaffe v. Bolton*, 817 S.W.2d 19, 25 (Tenn. Ct. App.1991).

Seraphine v. Aqua Bath Co., Inc., No. M2000-02662-COA-R3-CV, 2003 WL 1610871, at *8 (Tenn. Ct. App. March 28, 2003). Widow's only claim to entitlement of the proceeds from the wrongful death action is "by reason of [her] marriage" to the decedent. Accordingly, the postnuptial agreement, which is undisputedly valid and enforceable, waives her right to share in the wrongful death proceeds. Any issue as to whether the agreed order entered into by Widow operates as a waiver of her entitlement to the wrongful death proceeds is, therefore, pretermitted.

IV. Conclusion

The judgment of the Warren County Chancery Court is affirmed and remanded to the trial court for all further proceedings as may be necessary and are consistent with this Opinion. Costs of this appeal are taxed to Appellant Virginia Rickman, and her surety.

J. STEVEN STAFFORD, JUDGE