



Tanya K. Shunnara
Attorney at Law
tshunnara@sirote.com

This week, we report on a noteworthy case from the Alabama Supreme Court that narrowly construes the legal definition of bingo such that electronic bingo machines are deemed unconstitutional; and, a case from the Alabama Court of Civil Appeals that considers the enforceability of a postnuptial agreement.

Surles, et al v. Ashville and Alabama v. Ashville, No. 1080826 and 1081015 (Ala. January 29, 2010) (This consolidated opinion defines bingo for purposes of Alabama law and strikes down an Ashville ordinance that permitted machine bingo games because the ordinance extends the definition of bingo beyond permissible constitutional bounds). The City of Ashville (Ashville) adopted City Ordinance No. 2008-0011 (the ordinance) on December 22, 2008, which set forth rules and regulations for licensing, permitting, and operating "machine bingo games" within the city. In pertinent part, the ordinance defined bingo as "any game of chance known as bingo, including any game defined as such by state and federal law (whether or not electronic computer or other technologic aids are used in connection therewith)."

As a result of the ordinance, American Legion, Post 170 and Shooting Star Entertainment Group, LLC applied for permits to establish machine-bingo facilities. Subsequently, various declaratory judgment lawsuits were filed against them and Ashville, in which the primary issue was whether machine bingo is lawful under the Alabama Constitution. The trial court held that bingo may be conducted on electronic devices or machines. As a result, Sheriff Surles and District Attorney Minor filed a notice of appeal. The attorney general filed a notice of appearance and also filed a separate notice of appeal. The two appeals were consolidated for the purpose of writing one opinion. Additionally, Governor Bob Riley was permitted to intervene.

First, the Alabama Supreme Court considered Article IV, § 65, of the Alabama Constitution of 1901, which prohibits "lotteries or gift enterprises." It found that various local constitutional amendments create an exception to this general rule by authorizing bingo gaming, and such exceptions are to be narrowly construed. The Court stated that "[g]ames purporting to constitute legal bingo merely by using the word "bingo," by attempting to incorporate parts of the game of bingo, or by otherwise attempting to resemble that game have previously been invalidated."

On appeal, Sheriff Surles, District Attorney Minor, and Governor Riley argued that the definition of "bingo" provided in the ordinance and in the trial court's final order is unconstitutionally broad and conflicts with precedent that such exceptions to the constitutional prohibition on lotteries must be narrowly construed. The Alabama Supreme Court agreed, and in its opinion, outlined the legal definition of bingo. The most noteworthy portions of the definition include the human interaction requirements that a player must pay attention to the numbers or designations announced, physically mark his or her bingo card, and declare to the group that he or she has won when he or she recognizes a winning card. Because the ordinance permitted machine bingo games where all such player participation and interaction would be performed instead by a machine, its definition of bingo was overly broad, and thus, unconstitutional.

Nelson v. Estate of Wiley Nelson, Jr., No. 2080989 (Ala. Civ. Ap. January 29, 2010) (A postnuptial agreement was found to be valid even when wife did not consult with independent counsel). Sarah and Wiley Jones were married in July of 1984. At the time of the marriage, both spouses owned real estate in his or her individual name. On April 13, 1985, the postnuptial agreement that was the subject of the case was purportedly executed (almost nine months after the marriage). The postnuptial agreement provided, in pertinent part:

"All property owned by either husband or wife prior to marriage, specifically including those items listed in Exhibit A attached hereto, shall remain the separate property of the party to whom the property belonged before the marriage."

"All property acquired after the marriage of the parties shall be the separate property of the party acquiring the property, with all rights, title, and interest exclusively in that party."

"Each party shall have no rights or interest in separate property of the other, and each waives and releases all marital property rights in the other's estate that he or she might otherwise have or obtain, and on the death of husband or wife, the decedent's property shall pass by will or interest succession to decedent's heirs as if the marriage between husband and wife had never occurred."

"The parties acknowledge that they, and each of them, have been represented by counsel of their choice in preparation of this agreement, that their rights in the property described in this agreement have been fully explained to them, that the legal effect of this agreement has been fully explained to them, and that they understand the terms, provisions, and legal effect of this agreement."

Wiley executed his last will and testament on February 12, 2003, which included a clause indicating that "[m]y wife . . . is not included as a beneficiary of this will as authorized by a written agreement between myself and my said wife dated April 13, 1985. It is my intent that my said wife take nothing under my will and that she not share in my estate." Additionally, Wiley did not name Sarah as the beneficiary of the survivor benefits available under his retirement plan, and Sarah signed two acknowledgment forms indicating her understanding of same.

Prior to Wiley's death, he conveyed the marital residence to his nephews. Sarah did not join in the deed conveying that property to Wiley's nephews. Wiley died on May 15, 2006. Shortly thereafter, Wiley's nephews began eviction proceedings against Sarah. At trial, Sarah called into question the validity of the postnuptial agreement, and asserted that because the agreement was invalid, the deed from Wiley conveying the marital residence to his nephews was consequently invalid.

In order for a marital agreement to be valid under Alabama law, "a husband seeking to enforce [the] agreement must show that the entire transaction was fair, just, and equitable from the wife's point of view or that the agreement had been freely and voluntarily entered into by the wife, with competent independent advice, and with full knowledge of her interest in the estate and its approximate value."

Sarah first argued that Wiley failed to provide her with adequate consideration to support the agreement, and thus the transaction was unfair, unjust and inequitable. The Court rejected this argument, finding that consideration was adequate because but for the postnuptial agreement, Wiley could have obtained rights to Sarah's previously owned real estate under equitable division laws of Alabama. Separate property can be transmuted into marital property if it (or income from it) is "used regularly for the common benefit of the parties during the marriage." Because Sarah and Wiley used the rental income from Sarah's previously owned real estate to pay their household expenses, the Court found that the postmarital agreement would offer protection from equitable division, and thus, consideration was adequate. Furthermore, the Court stated that marriage itself, under appropriate circumstances, may be sufficient consideration for a marital agreement, and because the marriage between Sarah and Wiley was not so far removed in length of time from the date of the execution of the postnuptial agreement, the marriage itself was sufficient consideration.

Also noteworthy was the Court's rejection of Sarah's argument that the agreement was invalid because she did not have independent counsel to advise her regarding the agreement. The Court held that even if Sarah did not obtain legal advice before signing the postnuptial agreement, it was "of no consequence." The Court held that Sarah was highly educated (she holds a Master's Degree), and could not be relieved of her legal obligations on the basis of her failure to consult with an attorney when she made the decision not to do so. Further, the Court held that "Sarah cannot seek to avoid the legal effect of her own contractual agreement by claiming that she failed to seek legal advice when she represented in the agreement that she had done so." Thus, summary judgment in favor of Wiley's Estate was affirmed.



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