

## “Dodger Divorce” illustrates the importance of properly drafted prenuptial or postnuptial agreements

Justin K. Thomas  
Thomas Family Law Firm, PLC

Married for more than 30 years, Jamie McCourt filed for divorce from Frank McCourt on October 27, 2009. At stake: ownership of the famed Los Angeles Dodgers, which Frank McCourt purchased in 2004 for approximately \$430 million. In the divorce proceedings, Frank McCourt claimed he was the sole owner of the Dodgers. Naturally, Jamie McCourt disagreed and said she owned half of the baseball dynasty.



The determination of whether or not Frank McCourt was in fact the sole owner of the Dodgers ultimately came down to a 2004 marital property agreement, more commonly referred to as a “postnuptial agreement.” Frank contended the agreement clearly stated he was the sole owner of the Dodgers. Jamie McCourt’s attorneys, however, were able to prove that two versions of the document existed; one that designated Frank McCourt as the sole owner of the team and one that did not. The Court determined that the agreement was invalid and instructed Frank and Jamie McCourt to settle the ownership dispute outside of the courtroom. The saga continues to this day but I feel confident that Jamie McCourt will ultimately end up with a large stake in the Los Angeles Dodgers, worth hundreds of millions of dollars.

As evidenced by the McCourt’s divorce, if you are considering a prenuptial or postnuptial agreement, it is critical to make sure that the document is properly drafted and that all appropriate procedures are followed. Otherwise, you may end up losing at least a portion of the business, assets, etc., that you were originally trying to protect. Pre- and postnuptial agreements are becoming more and more common and it is important to understand the general requirements that make each valid and enforceable.

A **prenuptial agreement** is a contract that is signed prior to marriage by parties intending to get married whereas a **postnuptial agreement** is signed at some point after the parties are legally married. Both generally serve to divide property, address alimony, etc., in case of a divorce. The agreements are binding contracts and enforceable in court, assuming they are properly drafted and certain procedures are

followed. This article focuses on prenuptial agreements and provides a general outline and tips for those who may need a “prenup.”

In Tennessee, to have a valid prenuptial agreement, the contract must be (1) entered into voluntarily or freely, (2) in good faith, (3) without the existence of undue influence or duress, and (4) the person signing the agreement must have knowledge of the assets of the spouse requesting that the contract be signed. T.C.A. § 36-3-501.

**Translation:** A party generally needs to sign the agreement voluntarily without the presence of intimidation, stress, etc. Intimidation and duress can be very difficult to prove. An extreme example would be handing a future spouse an agreement five minutes before the wedding ceremony and saying:

“Darling, I love you but I’m not going through with the ceremony unless you sign this.”

The spouse being asked to sign the agreement must have knowledge of the overall net worth of the other spouse. It is good practice to attach a net worth statement to the agreement that provides a list of assets and their values. Unfortunately, that often doesn’t happen and that failure to make a full and fair disclosure of the assets can be fatal to the agreement. In some cases, “independent knowledge” (i.e. general knowledge of party’s bank accounts, real property, etc.) of the soon-to-be spouse’s assets can be enough, but again, that can be difficult to prove and generally is not a risk worth taking.

Also, I recommend that each spouse be represented by his or her own attorney. This will help eliminate claims that a spouse did not know what they were signing, did not understand the document, and/or were unfairly pressured into signing a document.

Prenuptial Agreements are far more complex than many realize. In order for a document to be enforced in the future, it is vitally important that appropriate procedures are followed and that the document is drafted correctly. Consulting with an experienced family law attorney is crucial when considering a “prenup,” as you want to ensure that the agreement is ironclad, in the event things go awry in your marriage.

Justin K. Thomas is the principal of Thomas Family Law Firm, PLC. The Thomas Family Law Firm focuses exclusively on family law matters in Tennessee and Mississippi. That narrow focus enables the firm to use its extensive experience and expertise in family law to provide knowledgeable, honest counsel to its clients, and most importantly, deliver the one-on-one attention and service that clients deserve.

An experienced family law advocate, founder Thomas is both a published author and graduate of the prestigious ABA Family Law Trial Advocacy Institute in Denver, Colorado. To learn more, visit us online at [www.ThomasFamilyLaw.net](http://www.ThomasFamilyLaw.net) or call 901.537.0010.