

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

JEROME V. HUGHES,

Appellant,

v.

JANET DAVIDSON-HUES,

Respondent.

DOCKET NUMBER WD71940

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 23, 2010

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Joel F. May, Judge

APPELLATE JUDGES

Division Two: James Edward Welsh, Presiding Judge, and Mark D. Pfeiffer
and Karen King Mitchell, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JEROME V. HUGHES,)
)
) **Appellant,**)
v.)
)
JANET DAVIDSON-HUES,)
)
) **Respondent.**)

WD71940

Jackson County

Before Division Two Judges: James Edward Welsh, Presiding Judge, and
Mark D. Pfeiffer and Karen King Mitchell, Judges

In conjunction with a dissolution action, Appellant Jerome Hughes and Respondent Janet Davidson-Hues entered into a separation agreement in which they agreed to divide their property between them. At issue here is certain real property located in St. Leonard, Maryland (“Maryland property”). With respect to the Maryland property, the separation agreement states:

The parties acknowledge that the real property . . . is the non-marital property of [Davidson-Hues] and she owns said property with her father. . . . All right, title and interest shall be vested in [Davidson-Hues] and [Hughes] is divested of all of his right, title and interest in said property. . . . Should this property be sold during [Hughes’s] life, [Hughes] will receive 1/14th of the gross proceeds.

(“Maryland property clause”). The separation agreement also provided: “If any provision of this agreement is found unenforceable should it be incorporated in the Decree of Dissolution, it shall be considered severable and enforceable as a contract” (“survival clause”).

The circuit court entered a judgment (“judgment”) that incorporated the terms of the settlement agreement, including the Maryland property clause and the survival clause. Ten years lapsed, and neither party revived the judgment.

On December 28, 2006, Davidson-Hues sold the Maryland property while Hughes was still living. She did not pay Hughes 1/14th of the gross proceeds, and Hughes filed a petition in

the circuit court, asserting breach of contract. Hughes's petition did not attempt to enforce the Maryland property clause as a judgment.

Davidson-Hues filed a motion for summary judgment, arguing that Hughes had no enforceable rights under the separation agreement (hereafter "the contract") because the contract had merged into the judgment, and the judgment was no longer enforceable because Hughes had not revived it within ten years. The circuit court agreed; accordingly, it granted Davidson-Hues's motion for summary judgment. Hughes appeals.

REVERSED AND REMANDED.

Division Two holds:

This is a contract case involving the separation agreement of former spouses. The issue is whether the parties' rights under the separation agreement were extinguished by virtue of the court's incorporation of the agreement's terms into its judgment, despite a clause in the separation agreement that provided that the parties' contractual rights would survive if the terms were found unenforceable after being incorporated into the judgment.

We review the circuit court's grant of summary judgment *de novo*. *Orla Holman Cemetery, Inc. v. Robert W. Plaster Trust*, 304 S.W.3d 112, 116 (Mo. banc 2010).

We hold that the survival clause was enforceable and that it applied to the facts of this case. The trial court erred in granting summary judgment on the basis of section 516.350. That statute concerns the enforceability of judgments, and Hughes has not attempted to enforce any judgment. The parties specifically agreed that their contractual rights with respect to the Maryland property would survive if they were incorporated into the judgment and were then found unenforceable, and there is no public policy against enforcing such an agreement. We reject Davidson-Hues's argument that the survival clause was not triggered in this case. Therefore, we reverse and remand for proceedings consistent with this opinion.

Opinion by: Karen King Mitchell, Judge

November 23, 2010

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