

NOTICE
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2011 IL App (4th) 100811-U

Filed 8/16/11

NO. 4-10-0811

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of FLOYD G.)	Appeal from
ISRINGHAUSEN, Deceased,)	Circuit Court of
MARY JANE ISRINGHAUSEN,)	Jersey County
Petitioner-Appellant,)	No. 09P2
v.)	
THE ESTATE OF FLOYD G. ISRINGHAUSEN,)	
Deceased, BRUCE ISRINGHAUSEN, SUSAN)	
ISRINGHAUSEN, GARY ISRINGHAUSEN, and)	Honorable
JUDY KUEBRICH,)	Eric S. Pistorius,
Respondents-Appellees.)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly concluded the 1981 antenuptial agreement is valid and enforceable.

¶ 2 Petitioner, Mary Jane Isringhausen (Jane), appeals the summary judgment orders finding enforceable a 1981 antenuptial agreement she and Floyd Isringhausen signed before their September 1981 marriage. Jane contends the trial court erroneously concluded (1) the antenuptial agreement was "fair and reasonable"; (2) appellees presented sufficient evidence to overcome the presumption of concealment; and (3) Floyd's 2007 modification of his will did not present evidence of actual concealment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Floyd and Jane married in September 1981. At the time, Floyd was 59 years old,

and Jane was 51. Floyd had five adult children with his previous wife, Virginia Isringhausen; Jane had one adult child from an earlier marriage. Floyd owned three farms; Jane, who had a masters degree in library sciences, worked as a director of libraries for the Jerseyville public schools. Through her work in the schools, Jane had a vested right in a pension plan.

¶ 5 Approximately one month before their wedding, Floyd, wanting to pass his land to his children, raised the issue of an antenuptial agreement with Jane. Jane neither recalled making any requests as to the provisions of the antenuptial agreement, nor remembered whether she read the agreement before signing it. She did remember she knew she would have the right to live in the house if Floyd died first and she would have a joint interest in property acquired during their marriage. Jane also understood when she signed the agreement, if Floyd died the day after they were married, she would have no claim to the farm machinery equipment, livestock, bank stock, or the land. Floyd's attorney drafted the antenuptial agreement.

¶ 6 The antenuptial agreement, dated September 4, 1981, set forth the property Floyd and Jane separately owned. According to the agreement, Floyd owned farm machinery, equipment, and livestock as well as bank stock. An "undetermined" value was specified. As for Floyd's real property, the agreement identified three farms with the following values: 520 acres in Richwood Township, Jersey County, \$674,000; 240 acres in Fidelity Township, Jersey County, \$624,000; and 387 acres in Greene County, \$870,000. These farms were subject to Virginia's estate, which remained open at the time. The agreement stated Jane owned a certificate of deposit (CD) with her daughter, as well as a 1979 Buick Regal, household items, personal items, and jewelry. The values for these items were listed as "unknown."

¶ 7 Pursuant to the antenuptial agreement, Floyd agreed to transfer to Jane his

ownership of all household furnishings and the family vehicle. Floyd also agreed to give Jane "the right to live in the family home for the rest of her life or until she remarries." Floyd further agreed to, within 60 days of their marriage, make Jane the beneficiary of a \$50,000 whole-life insurance policy.

¶ 8 In the antenuptial agreement, the parties provided for "[o]wnership of after-acquired [p]roperty" in the following manner:

"All property acquired by either future husband or future wife, or by both of them, after solemnization of the marriage, whether real or personal, shall be jointly owned property of the parties as tenants in common, including all rents, issues, profits and proceeds of the property, with each owning a one-half undivided interest therein."

¶ 9 According to the agreement both parties waived their rights to elect to take against the will of the surviving spouse. Under its terms, Jane specified she "clearly understands that if Floyd should predecease her, her statutory interest in the estate of Floyd would be greatly in excess of the provision herein made for her."

¶ 10 During her deposition, Jane testified she did not believe Floyd deceived her as to what he owned when they were married. When she signed the antenuptial agreement, she understood what Floyd owned. Jane was not aware of any concealed assets.

¶ 11 When Virginia died, she bequeathed a life interest in her share of the farm to Floyd and the remaining interest to their children. Jane knew when she and Floyd married Floyd only had a half interest in the land. She did not know he only had a half interest in the residence,

which was on the land.

¶ 12 The farm provided Floyd and Jane's income during the marriage. Beginning in approximately 2000, Floyd began transferring the farmland to his children. The home was located on the 520-acre Richwood Township farm. This was the farm from which acreage was transferred by Floyd to his children during his lifetime. The Fidelity Township farm was lost when Floyd's son Roger Isringhausen defaulted on a loan. The Greene County farm was operated by Floyd's daughter Judy Kuebrich and her husband until 2003 or 2004. It was then rented.

¶ 13 In May 2007, Floyd amended his will. In section 5 of his will, Floyd provided his interpretation of provisions in the antenuptial agreement. Section 5 states the following in relevant part:

"I give the family automobile, four[-] wheel pickup and camper, to my wife. It is my position that any livestock or machinery that I own at my death is not affected by the above[-]referenced Antenuptial Agreement. While those items were purchased after my marriage to Jane, they were replacements of machinery and livestock that I had before marriage and not additional property that could be considered property acquired after marriage, as intended by the language in (4)F of the Antenuptial Agreement whereby my spouse would own a one-half interest in said items. It is my desire and direction that these items, in their entirety, pass by the residuary section of my Will. If my interpretation is not correct, then the camping trailer and truck which I am not bound by the Antenuptial

Agreement to give to [] Jane, shall be distributed according to the residuary section of this Will."

¶ 14 Floyd died in 2008. At the time of his death, Floyd owned a 16% interest in the Richwood Township farm and a 50% interest in the Greene County farm. Approximately \$11,000 was in their joint account. The money came from "rents." Jane testified in her deposition Floyd did not have any stocks, bonds, or mutual funds, but she did. Jane had some certificate of deposits (CDs) in her and her daughter's name. She funded them with money from her retirement income. Jane retired in 1985. She received \$2,300 each month as her pension. At her deposition, Jane testified "Floyd did not want any of my money." Floyd told Jane "he could take care of me when we got married." The parties cite no evidence in the record as to the amount Jane had deposited in the CDs.

¶ 15 Upon Floyd's death, Jane received the family car, but she testified she had purchased the car.

¶ 16 Floyd's will was admitted to probate in January 2009. In July 2009, Jane filed her "Renunciation of Will" and a claim against Floyd's estate. In June 2010, Jane moved for declaratory and summary judgment, asking the trial court to rule the antenuptial agreement was unenforceable as a matter of law. In July 2010, the estate filed a cross-motion for summary judgment, arguing the contrary.

¶ 17 In September 2010, the trial court entered summary judgment for the estate, upon concluding the antenuptial agreement was enforceable. The court found "the agreement does provide an equitable financial settlement in that there was full disclosure as to [Floyd's] assets" when the agreement was made. The court further found the specificity in the agreement

"overcomes any suggestion of concealment." Moreover, the court concluded paragraph five of Floyd's will "does not constitute express evidence of concealment."

¶ 18 This appeal, pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2006)) followed.

¶ 19 II. ANALYSIS

¶ 20 Jane appeals the trial court's decisions granting respondents' motion for summary judgment and denying her summary judgment motion. Our review of summary judgment orders is *de novo*. See *A.B.A.T.E. of Illinois, Inc. v. Giannoulis*, 401 Ill. App. 3d 326, 330, 929 N.E.2d 1188, 1192 (2010).

¶ 21 Antenuptial agreements entered into before the 1990 enactment of the Illinois Uniform Premarital Agreement Act (Premarital Act) (750 ILCS 10/1 through 11 (West 2008)) are valid and enforceable if they meet the following requirements:

"(1) an unforeseen condition of penury is not created due to lack of property resources or lack of employability; (2) the agreement is entered into with full knowledge and without fraud, duress, or coercion; and (3) the agreement is fair and reasonable." *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 299, 834 N.E.2d 56, 65 (2005).

In this case, the parties agree the Premarital Act does not apply to the antenuptial agreement, which was executed in September 1981.

¶ 22 Jane contends the first two prerequisites for an enforceable antenuptial agreement are not satisfied. She begins by maintaining the antenuptial agreement is not fair and reasonable.

¶ 23 In making her argument the antenuptial agreement is not "fair and reasonable," Jane contends the trial court applied the wrong standard. Jane argues the court found the agreement fair and reasonable upon concluding Floyd made "full disclosure" of his assets in the agreement. Jane maintains, however, the proper standard for "fair and reasonable" is the agreement "guarantee[s] both parties an equitable financial settlement in lieu of a waiver of their rights to property or maintenance." *Murphy*, 359 Ill. App. 3d at 300, 834 N.E.2d at 65. Jane further concludes the antenuptial agreement does not provide an equitable financial settlement in lieu of her waiver.

¶ 24 Respondents contend even if the trial court used the wrong standard for testing the agreement, the record supports the court's "fair and reasonable" conclusion. Respondents argue the antenuptial agreement was fair and reasonable in light of Jane's knowledge of Floyd's goal to leave the farmland to his children, Floyd's full disclosure of his assets, and Jane's testimony she knew of nothing Floyd concealed.

¶ 25 As respondents contend, we may affirm a trial court's judgment on any basis appearing in the record. See *Murphy*, 359 Ill. App. 3d at 300, 834 N.E.2d at 65. We find the record supports the trial court's "fair and reasonable" finding under the standard articulated as proper by Jane. We need not conclude whether the court erred in focusing on "full disclosure" when rendering its decision.

¶ 26 According to the case law, an antenuptial agreement is "fair and reasonable" if it "guarantee[s] both parties an equitable financial settlement in lieu of a waiver of their rights to property or maintenance." *Murphy*, 359 Ill. App. 3d at 300, 834 N.E.2d at 65. "Equitable" is defined as "[j]ust; conformable to the principles of justice and right." Black's Law Dictionary at

537 (6th ed. 1990). The term "equitable financial settlement" does not require the financial settlement be equal to the amount ultimately waived. See generally *Megginson v. Megginson*, 367 Ill. 168, 179, 10 N.E.2d 815, 820 (1937) ("[T]he mere fact that the wife will not receive as much from her husband's estate as she would had no ante-nuptial contract been executed does not afford ground for holding the contract invalid."). When considering whether an antenuptial agreement is fair and reasonable, a court may consider the parties' circumstances not only at the time the agreement was entered, but also at the time the agreement is challenged or enforced. See generally *In re Marriage of Berger*, 357 Ill. App. 3d 651, 653, 657-58, 829 N.E.2d 879, 882, 885 (2005) (considering the wife's income near the time of the divorce, which occurred over 15 years after the signing of the antenuptial agreement, in determining whether an antenuptial agreement was "fair and reasonable").

¶ 27 Given the purpose of the antenuptial agreement, Jane's knowledge of Floyd's property and its values, the provision of property for Jane at the time the agreement was signed, and Jane's financial security, the agreement is "fair and reasonable." Both parties, who had adult children, knew the *purpose* of the agreement was to allow Floyd to pass the farms he and his first wife Virginia acquired to their adult children. Floyd and Jane were in their 50s when they got married, and Jane was nearing the end of her career and the time when she would begin collecting a monthly pension payment of \$2,300. Floyd and Jane lived on the income from the farms; Jane testified Floyd did not want Jane's money. Jane was thus able to fund CDs with the income from her \$2,300 monthly payments she began receiving in 1985. Although the record does not establish the value of these CDs and it shows Jane purchased an automobile with these funds, Jane does not contradict respondent's implication she accumulated a large sum as a result of

Floyd's providing for her during their marriage. Floyd and Jane shared no children. Jane, now in her 80s, received a life estate in the residence, all household furnishings, and the proceeds from a \$50,000 life-insurance policy, and would continue to receive \$2,300 each month. Jane, in signing the agreement, also agreed she knew her statutory share would be much larger than the amount she would receive under the agreement.

¶ 28 Jane next argues the second prerequisite, "the agreement is entered into with full knowledge and without fraud, duress, or coercion" (*Murphy*, 359 Ill. App. 3d at 299, 834 N.E.2d at 65), is not satisfied. Jane contends, due to her relationship with Floyd, a presumption of concealment exists, and appellees are unable to overcome it.

¶ 29 In making this argument, Jane relies on *Watson v. Watson*, 5 Ill. 2d 526, 126 N.E.2d 220 (1955). In *Watson*, the supreme court stated the circumstances in which a *prima facie* case of concealment is presumed:

"The parties in this case agree that where persons, parties to an antenuptial contract, are engaged to be married before the contract is entered into, a confidential relationship exists and if the provision made for the wife is disproportionate to the extent and value of the husband's estate a presumption is raised of an intended concealment by the intended husband." *Watson*, 5 Ill. 2d at 529-30, 126 N.E.2d at 222.

The *Watson* court further concluded the following:

"This presumption, without more, constitutes a *prima facie* case of concealment and casts upon those who would sustain the

agreement the burden of showing the absence of concealment and that the intended wife had full knowledge of the nature and extent of the husband's property." *Watson*, 5 Ill. 2d at 530, 126 N.E.2d at 222.

¶ 30 The case law establishes a presumption of concealment can invalidate an antenuptial agreement. See *Hessick v. Hessick*, 169 Ill. 486, 490-91, 48 N.E. 712, 714 (1897). However, *Hessick* holds a presumption can do so "unless it be shown by the husband or those claiming the benefit of the agreement, that [the wife] executed it with knowledge of the extent and value of his property." *Hessick*, 169 Ill. at 490-91, 48 N.E. at 714; see also *Geiger v. Merle*, 360 Ill. 497, 515, 196 N.E. 497, 505 (1935) ("Such a presumption is not evidence, and, as soon as contrary evidence is produced, the presumption vanishes.").

¶ 31 Appellees have overcome the presumption by showing Jane executed the antenuptial agreement "with knowledge of the extent and value of [Floyd's] property." *Hessick*, 169 Ill. at 490-91, 48 N.E. at 714. The agreement specifies the property Floyd owned in 1981 and the property's values. Jane testified in her deposition she understood Floyd's ownership interests in the farms. Jane also understood Floyd had only a life-estate interest in 50% of such property, further establishing Jane knew what Floyd owned. Jane knew of nothing concealed by Floyd. These facts overcome any presumption of concealment.

¶ 32 Jane further argues not only must it be shown she understood the property owned by her husband, but it also must be shown she understood the effect of the provisions of the instrument. Jane contends the trial court erred by not considering whether she understood the antenuptial agreement's effect. In support, Jane cites *Taylor v. Taylor*, 144 Ill. 436, 445, 33 N.E.

532, 534 (1893) (concluding appellants had the burden to establish the wife had knowledge "of the provisions and effect of this instrument").

¶ 33 We find respondents also have shown Jane understood the effect of the antenuptial agreement. Jane, in her deposition, testified she knew Floyd wanted to leave his farms to his children. She knew the purpose of the agreement would be to assure this occurred. Moreover, the language in the agreement states Jane waives her statutory right to seek this property, and Jane knows she would receive substantially less under the agreement than if she took her statutory share.

¶ 34 We need not find whether the trial court's reasoning was erroneous, because we find the record shows the court's decision was proper. See *Murphy*, 359 Ill. App. 3d at 300, 831 N.E.2d at 65 (concluding the court may affirm the trial court's judgment on any basis appearing in the record).

¶ 35 Jane's case law is factually distinguishable. In *Hessick*, the court found "no proof whatever as to whether [the wife] knew the nature, character[,] or value of his property." *Hessick*, 169 Ill. At 489-90, 48 N.E. at 714. In *Taylor*, the court found no testimony regarding the circumstances of the making of the antenuptial agreement or of its execution and no evidence as to the value of the husband's estate at the time the agreement was executed. *Taylor*, 144 Ill. at 443, 33 N.E. at _____. In *Achilles v. Achilles*, 151 Ill. 136, 140-41, 37 N.E. 693, 694 (1894), the court found the husband actually concealed his ownership of a large portion of his property from his wife.

¶ 36 Jane next contends paragraph 5 of Floyd's 2007 will constitutes evidence Floyd concealed facts from Jane when the antenuptial agreement was executed. Calling paragraph 5 a

"unilateral modification of the [a]ntenuptial [a]greement," Jane argues Floyd did not disclose, and thus concealed, his interpretation of "after acquired property," attempting to deprive Jane of marital property to which she believed she would be entitled a share. Jane also points to the fact the estate began distributing the assets according to Floyd's interpretation of "after acquired property."

¶ 37 Jane cites no authority supporting her argument. On this ground alone her argument fails. See *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 522 (2001) ("By failing to provide proper argument and citations of authority, defendants forfeited these arguments.").

¶ 38 Jane's argument also fails on the merits. First, we address Jane's contention Floyd unilaterally modified the antenuptial agreement. Apart from the fact contracts cannot be unilaterally modified "without the knowledge and consent of the remaining party" (*Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 469, 809 N.E.2d 180, 189 (2004)), paragraph 5 of the will does not assert a modification but an *interpretation* of language in the antenuptial agreement. Floyd's language in the will anticipates a finding his interpretation may not be correct and provides a distribution based on both interpretations.

¶ 39 Second, whether or not paragraph 5 is "evidence" of actual concealment is irrelevant, because proof of actual concealment, in these circumstances, is necessary to establish an antenuptial agreement is unenforceable. See generally *Murphy*, 359 Ill. App. 3d at 299, 834 N.E.2d at 65 ("An antenuptial agreement *** will be found valid and enforceable if it meets the following requirement[]: *** the agreement is entered into with full knowledge and without fraud ***."). Even assuming Floyd's act in specifying his interpretation of "after acquired

property" 26 years after the antenuptial agreement was executed makes a finding of concealment more probable, this act is far short of proving actual concealment in 1981. No evidence suggests Floyd anticipated a dispute over such language in the antenuptial agreement until approximately 2007. The mere fact the will was not modified until 2007, when Floyd was in his 80s, instead of in the initial weeks or years after the antenuptial agreement was signed, makes it more likely Floyd was not trying to "pull a fast one" on Jane. In addition, no evidence suggests Floyd had any concerns Jane would not marry him or sign the antenuptial agreement if he told her he believed after-acquired cattle and equipment, replacing the old, would go to his children. In contrast, Jane's deposition testimony and the language in the antenuptial agreement indicate Floyd was open with Jane. Jane knew Floyd wanted his farms, which included an operating cattle farm, to go to his children. Jane knew Floyd had machinery; Jane knew Floyd had livestock.

¶ 40 Third, Jane argues paragraph 5 is a modification because appellees have treated it as such. Jane maintains the estate began distributing assets based on Floyd's interpretation of "after acquired property" and such actions cannot be undone. Jane further emphasizes the fact respondents placed for sale the residence in which she held a life estate.

¶ 41 These matters are for the trial court to resolve when deciding Jane's claim against the estate. They are irrelevant to how paragraph 5 of the will and the antenuptial agreement should be interpreted. This question, the question of how to interpret "after acquired property," is one for the trial court (see generally *Regency Commercial Associates, LLC v. Lopax, Inc.*, 373 Ill. App. 3d 270, 275, 869 N.E.2d 310, 316 (2007)). This question does not affect the validity of the antenuptial agreement as it does not establish concealment or fraud.

¶ 42 Last, in anticipation of respondents' argument, Jane argues she did not waive her right to renounce the will. On appeal, respondents argue Jane ratified the antenuptial agreement when she filed her claim against the estate and a *lis pendens* which, they maintain, relies on the validity of the antenuptial agreement.

¶ 43 This issue is moot, and we will not address it. We find the antenuptial agreement is valid and enforceable and the terms of the agreement bar Jane from renouncing the will. Thus, any decision on this issue would be advisory and have no effect. See *In re Estate of Stark*, 374 Ill. App. 3d 516, 525, 872 N.E.2d 1011, 1018 (2007) (concluding advisory opinions, decisions that cannot result in proper relief, are moot and should be avoided).

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment.

¶ 46 Affirmed.