

NOTICE

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2012 IL App (5th) 080382-U  
NO. 5-08-0382  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
THERSIA SWEET,	)	Madison County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 03-D-1119
	)	
STEPHEN SWEET,	)	Honorable
	)	Thomas W. Chapman,
Respondent-Appellee.	)	Judge, presiding.

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JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Chapman and Spomer concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in upholding the validity of the prenuptial agreement, reforming said agreement, allocating marital and nonmarital property pursuant to the terms of said agreement, declining to find dissipation of assets, awarding maintenance in gross, and finding the terms and application of the prenuptial agreement not unconscionable.

¶ 2 **STATEMENT OF FACTS**

¶ 3 This is an appeal of the judgment of the circuit court of Madison County dissolving a marriage of relatively short duration, five years, and more years of tortuous litigation. Thersia Sweet appeals the judgment of the circuit court upholding the validity and reformation of a prenuptial agreement, the allocation of property as nonmarital and marital, and its subsequent distribution. Specifically, Thersia argues that the circuit court erred in granting a declaratory judgment in favor of Stephen Sweet upholding the validity of the prenuptial agreement, erred in reforming said agreement by adding a page nine to the

multipage document, and, in ruling pursuant to the terms of the prenuptial agreement, erred in determining that the parties' personal efforts during the marriage were nonmarital property, failing to designate millions of dollars that Stephen allegedly diverted from his nonmarital corporations' earnings as dissipation of the marital estate, and failing to treat a house acquired by Stephen during the marriage as marital property. For the following reasons, we affirm the judgment of the circuit court of Madison County.

¶ 4

#### FACTS

¶ 5 Thersia and Stephen began dating in 1979 and were together 19 years before they married. In 1989, Stephen started a company, Abatement Management, Inc., and that same year, Thersia began working for the company. In 1991, Thersia and Stephen decided to live together. Stephen started a second environmentally-oriented company, Lake Environment, Inc., in 1993, and Thersia subsequently worked for both companies.

¶ 6 Both corporations were subchapter S corporations in which Stephen was the sole shareholder and had total control. He set his own salary and that of Thersia. Thersia had responsibilities in both companies as the office manager, purchaser of supplies, payroll, accounts payable and receivables, and other day-to-day management. In addition to these duties, Thersia handled Stephen's personal financial accounts.

¶ 7 The parties married on May 9, 1998. Within two weeks of the marriage date, Stephen presented Thersia with a prenuptial agreement that he characterized, according to Thersia, as a living trust, and suggested she take it to a lawyer, sign it, and date it. Thersia testified that she was very upset about the situation as they had been together for approximately 19 years, neither had broached the subject of a premarital agreement, and the timing of this issue was within two weeks of a wedding which they had planned for over a year. Thersia took the agreement to attorney William Lucco, who made proposed changes which resulted in subsequent back-and-forth negotiations between Mr. Lucco and Stephen's attorney,

Christopher Hunter. A day or two before the wedding, Stephen told Thersia that if she did not sign the prenuptial agreement, there was not going to be a wedding. According to Thersia, Stephen's statement that she knew he would take care of her no matter what had alleviated some of the tension of the situation, and the agreement was subsequently signed. The record reflects that the final version of the agreement was signed against Mr. Lucco's advice. Neither party realized at the time that page nine of the document was missing.

¶ 8 The parties were married on May 9, 1998, and spent a 21-day honeymoon in Europe. It is uncontested by the parties that the circumstances of the prenuptial agreement were the source of a lot of tension from the beginning of the marriage.

¶ 9 The work situation of the parties continued after the marriage with the addition that the wife was required to sign various indemnification bonds for Stephen's corporations. Thersia claims she was not made aware prior to the marriage that she would have to sign as an indemnitor for bonding, but it is uncontested that the signing as indemnitor was after the couple was married, and it is further uncontested that the bonding was in the normal course of Stephen's business.

¶ 10 Attached to the original signed prenuptial agreement were lists of assets of both Thersia and Stephen, in order to fulfill the requirements of full disclosure prior to the signing of the prenuptial agreement. During the course of many hours of testimony, Thersia indicated that, based on her position in handling Stephen's personal financial affairs, she had actually prepared the disclosure list for Stephen.

¶ 11 During the marriage, the parties experienced a very comfortable lifestyle financed in great part by the retained earnings and other assets of the two corporations. Their expenditures included a motor home, a pleasure version of a racing boat, a 42-foot cruiser yacht, and a 46-foot skater boat with two engines. During the same period of time, the couple traveled frequently, often in relation to Stephen's boating hobby. They took numerous

cruises to the Bahamas and Florida, and traveled to other places related to boating. Their lifestyle, as a practical matter, was financed by the corporations. Various vehicles were also purchased by the couple through the corporations. The couple also had investment accounts and real estate. A number of Edward Jones accounts were valued near \$500,000 at the time of this litigation, and there was real estate in Fairview Heights and Lake of the Ozarks, Missouri, the latter of which Stephen claims was gifted to him by his parents. Stephen also had a home in Wood River, Illinois.

¶ 12 The trial was a long and tortured affair with many weeks of testimony over an extensive period of time and depositions of the aforementioned attorneys, Mr. Lucco and Mr. Hunter, who were involved in the prenuptial agreement. It is an understatement to characterize this litigation as bitter and contested. Ultimately, the circuit court entered a thorough and extensive order. A summary of the circuit court's order follows. Having previously found that there were irreconcilable differences and a breakdown of the marriage which justified an order of dissolution, the supplemental judgment of dissolution dealt with the issues in the introduction to this order. The court preliminarily noted that multiple sets of attorneys had been involved in the litigation, that thousands of pages of documentary evidence had been reviewed in discovery, that many depositions were considered, and that the trial lasted weeks. As the circuit court accurately noted, the antenuptial agreement, as it is broadly drafted, is "potentially consequential." The circuit court noted that Thersia at various times took different positions as to the validity of the prenuptial agreement as to both its formation and ultimately its conscienability.

¶ 13 The second major position of Thersia dealt with the purchase of assets, particularly "a million dollar speedboat," and accounting practices relating to Stephen's two corporations, alleging that Stephen took actions to shield said assets from distribution as marital property. Stephen's position during this litigation was that the prenuptial agreement was valid and,

according to the terms of the agreement, that nonmarital property was delineated as property he possessed prior to the marriage, any increase in the value of such property, property acquired in exchange for said property, and any income from said property during the course of the marriage. After reviewing in detail the elements of section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d) (West 2002)), the court dealt with the key question in this litigation, the validity of the prenuptial agreement, a source of fierce controversy. During the course of the litigation, Stephen filed a motion for declaratory judgment concerning the validity of the prenuptial agreement and requesting the court supply the missing page nine, the contents of which came from prior drafts of the prenuptial agreement. The court ultimately concluded, in an order entered prior to the order appealed from (April 3, 2007), as follows:

"Court finds the ante nuptial agreement to be valid and enforceable, and that page 9 should be included, as its absence from the final draft was scrivener's error, or clerical error."

In the order appealed from, the circuit court repeated its finding as to the prenuptial agreement, including further that the absence of a page was not due to the intentional act of a party, that there was no reliance by either party on the content of the missing page, and that while the missing page indicated provisions not quite mirroring each other as to indemnity, the provisions were not material, and that the court could reform the agreement from another copy. The court further found that "[t]he same page from the penultimate 'draft' fit seamlessly in the gap in the final copy." The trial court noted each party had waiver and release provisions and mutually binding obligations and that the contents of page nine had no effect upon the validity of the prenuptial agreement, nor did it thwart the apparent intentions of the parties in making the agreement.

¶ 14 The court also found against Thersia's contentions attacking the voluntariness and

conscienability of the prenuptial agreement. In determining Thersia's contention that the agreement was not valid due to the conscienability and questions of formation, the circuit court made the following findings of fact:

"With respect to these issues, the court makes the following findings: [Thersia] knew at the time of execution of the document that [Stephen] wanted to protect his property and earnings through the use of the ante nuptial agreement. [Thersia] knew and understood that the ante nuptial agreement provided that [Stephen's] future earnings from the pre owned businesses would remain his separate property. [Thersia] is intelligent, and knowledgeable about bookkeeping. [Thersia] had been in the past involved as [Stephen's] bookkeeper. [Thersia] was, at the time she entered into the agreement, knowledgeable about [Stephen's] property, assets, and income. [Thersia] was, at all times relevant, knowledgeable about her own property, assets, and income. [Thersia] was, at all relevant times, knowledgeable about the marital property. [Thersia] had sufficient knowledge of the nature, value and extent of the property affected by the [a]greement. [Stephen] fully disclosed the nature, approximate value and extent of his assets to [Thersia]. [Thersia] herself prepared the list of property for inclusion in the ante nuptial agreement. The parties acknowledged in the agreement their understanding of the assets. [Thersia] understood the terms of the agreement and the effect of the [a]greement on the rights of each party. Both parties were represented by competent counsel: Christopher Hunter for [Stephen] and Bill Lucco for [Thersia]. Christopher Hunter and Bill Lucco have considerable experience in complex family work. The agreement was the result of negotiation. The attorneys reviewed the documents, and multiple drafts and revisions were made over a period of weeks. The final draft is about twenty pages not counting the property lists, and each page that was included is initialed by both parties. The

document is signed [by] both parties, and by one of the attorneys.

The court does not find credible [Thersia's] testimony that she did not read the document. A) [Thersia] acknowledged in the agreement itself, on a page she initialed, that she gave due consideration to all matters contained in the agreement, (Article VIII, p. 15, p. 8) which would not be expected if the agreement had not been read. B) The agreement was the subject of numerous drafts, and that deliberation increases the likelihood that it was read. [Thersia] had ample opportunity to read the agreement prior to executing it. One who has an opportunity to read an ante nuptial contract before signing, but signs before reading, cannot later plead lack of understanding or that she was misled. *In re Marriage of Kloster*, 127 Ill. App. 3d 583, 469 N.E.2d 381 (2d Dist. 1984). C) [Thersia] had input into the agreement, which suggests she read and understood it. [Thersia] admitted she prepared [Stephen's] personal financial statement (May 24, 2007 transcript, p. 163) and contributed the lists to the agreement."

¶ 15 Concerning the missing page, further in its order the circuit court briefly revisited the issue. In its commentary, the court made the following statement:

"The most likely scenario is that everyone missed the missing page in the final copy to be signed, and that copy should not be seen as a different 'draft' or 'version' as such, because it was not intended to be any different from a 'version' containing the page."

¶ 16 In her arguments to this court, Thersia attacks the "most likely scenario" language of the circuit court indicating that its finding did not meet the clear and convincing standard applicable to the declaratory judgment/reformation questions. We find, however, that the determination in a prior order wherein the court found that the prenuptial agreement was valid and the cause of page nine being missing did meet the applicable standard and that the final order in this cause was merely reiterating prior findings and conclusions.

¶ 17 The circuit court further found that Thersia was not forced to execute the prenuptial agreement and both Thersia and Stephen intended to be bound by said agreement. The court noted, "While the circumstances surrounding the execution of the agreement may have been stressful, (and such is the case with most meaningful negotiations, and for that matter, with most planned weddings) this agreement was not a product of coercion or duress." The court further found that Thersia signed the agreement contrary to the advice of her attorney and that while the entire incident of the antenuptial agreement was a continuing source of friction that contributed to the breakdown of the marriage, this unfortunate fact did not affect the validity of the prenuptial agreement. The court noted that conditioning marriage on the execution of a prenuptial agreement in itself does not give rise to duress. *In re Marriage Barnes*, 324 Ill. App. 3d 514, 755 N.E.2d 522 (2001); *In re Marriage Murphy*, 359 Ill. App. 3d 289, 834 N.E.2d 56 (2005). The court accordingly, based on the above-mentioned factors, found the prenuptial agreement to be valid and enforceable.

¶ 18 Based on its finding that the prenuptial agreement was valid, the circuit court determined that Thersia's arguments as to transmutation or dissipation of property that she argued was part of the marital estate were governed by various articles in the agreement. Based upon the terms of the prenuptial agreement, the court determined what items were nonmarital and found against Thersia on issues of transmutation, personal efforts at increasing the value of nonmarital property, increases in the income from or value of nonmarital property, the contribution to said property made by personal effort, and the issue of dissipation of the marital estate. The court further determined that the terms of the prenuptial agreement did not bar Thersia from requesting maintenance.

¶ 19 The ultimate disposition of property was made by the court in the following manner. It awarded Stephen the property listed as his on Exhibit A attached to the prenuptial agreement, debt associated with that property, credit card debt prior to the date of separation

of the couple, and company debt. Thersia was awarded property listed in Exhibit B, her list of assets attached to the prenuptial agreement, the debt of any credit card expenditures made by her since the date of separation, various investment accounts, and furniture. Each was awarded various vehicles, and Thersia was awarded half the value of two motorcycles determined to be marital property.

¶ 20 As to maintenance, the court determined, after reviewing the provisions of section 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504 (West 2002)), that Stephen has a significant nonmarital estate and a high income, and it considered the monthly expenses of Thersia and the present and future earning capacity of each party and any impairment thereto, noting that Stephen had a higher earning capacity than Thersia and noting that Thersia had not been constrained from furthering her education or had an adverse impact on her ability to work due to the marriage. The court further noted that maintenance is intended to be rehabilitative in nature when circumstances indicate a dependent spouse may become financially independent and that the spouse receiving maintenance has an obligation to attempt to become self-sufficient. The court noted that in this particular case, Thersia did not seek or achieve any employment status until after a substantial period of time and after being ordered to seek employment by the court. Knowing that the standard of living of Stephen and Thersia as a couple was lavish, the court also noted that the duration of the marriage was from May 9, 1998, until separation in May of 2002, and so determined that this marriage of approximately six years was of short duration, citing *In re Marriage Siddens*, 225 Ill. App. 3d 496, 588 N.E.2d 321 (1992). The circuit court further declined to consider the period of time Stephen and Thersia spent together as an unmarried couple, citing public policy consideration in *Hewitt v. Hewitt*, 77 Ill. 2d 49, 394 N.E.2d 1204 (1979), *In re Marriage Hughes*, 160 Ill. App. 3d 680, 513 N.E.2d 1203 (1987), and *In re Marriage Goldstein*, 97 Ill. App. 3d 1023, 423 N.E.2d 1201 (1981). Ultimately the court concluded

that along with the short duration of the marriage and Thersia's less than vigorous efforts towards economic self-sufficiency, the court should also consider the substantial amount of nonmarital property assigned to Stephen pursuant to the prenuptial agreement. The court said specifically:

"Since [Thersia] gets a relatively limited award under the ante nuptial definitions of non marital property, (which include increases in value of non marital property, and income from non marital property), the court finds that [Thersia's] maintenance claim is substantially strengthened, and therefore awards maintenance."

The court subsequently made the following award:

"Given the fact that [Thersia] has already received considerable temporary maintenance in the form of free housing, and has not made substantial efforts toward rehabilitation, and given the interplay between duration and needs as per the above, the court awards non modifiable maintenance in gross, in the amount of \$60,000."

In the final page of its order, the trial court indicated that each party should maintain their own health insurance and awarded an additional \$35,000 to Thersia's attorney. Thersia has timely appealed.

¶ 21

#### ANALYSIS

¶ 22 The lynchpin of this litigation is the validity of the parties' prenuptial agreement, affected in no material manner by reformation of that agreement with the addition of the missing page nine. The prenuptial agreement is the basis upon which the circuit court made its decisions and assignments as to marital and nonmarital property and the subsidiary issues of the increase in value of those properties, by either business activity or personal efforts of Thersia. The validity of the prenuptial agreement also determined whether, in the course of his financial dealings, Stephen transmuted or dissipated the marital estate; if the various expenditures by Stephen were made from nonmarital property, there was by definition no

dissipation of the marital estate. We also note that the major thrust of the parties' briefs goes to those issues directly related to the validity of the prenuptial agreement. We find that the circuit court's determination that the prenuptial agreement of the parties was valid is substantially supported by the record and that the court's reformation of the agreement by addition of the missing page nine was appropriate and had virtually no effect on the substantive issues in this cause. Upon review of the provisions of the prenuptial agreement, we further conclude that the circuit court appropriately assigned properties as to their marital and nonmarital status, and that its conclusions as to an award of maintenance, various personalties, and attorney fees were not against the manifest weight of the evidence.

¶ 23 We consider first the question of the validity of the prenuptial agreement. The record indicates that the agreement was signed by both parties, which they both admit, and the content of the agreement indicates acknowledgment that each signatory had read the agreement. The record indicates that both Thersia and Stephen had advice of experienced and respected counsel, and the court noted that both "have considerable experience in complex family work." The record further indicates that the prenuptial agreement was the subject of intense negotiations between the parties and some revision. Both Thersia and Stephen began this litigation with the position that the prenuptial agreement was valid, but offered conflicting interpretations of its key provisions. In its consideration of Stephen's motion for declaratory judgment to determine the prenuptial agreement as valid, as well as the question of reformation of the agreement, the circuit court heard extensive testimony as to its formation, the participation of each party's counsel, and the circumstances of the missing page nine.

¶ 24 Concerning formation, the court's findings are stated as follows:

"With respect to these issues, the court makes the following findings: [Thersia] knew at the time of execution of the document that [Stephen] wanted to protect his

property and earnings through the use of the ante nuptial agreement. [Thersia] knew and understood that the ante nuptial agreement provided that [Stephen's] future earnings from the pre owned businesses would remain his separate property. [Thersia] is intelligent, and knowledgeable about bookkeeping. [Thersia] had been in the past involved as [Stephen's] bookkeeper. [Thersia] was, at the time she entered into the agreement, knowledgeable about [Stephen's] property, assets, and income. [Thersia] was, at all times relevant, knowledgeable about her own property, assets, and income. [Thersia] was, at all relevant times, knowledgeable about the marital property. [Thersia] had sufficient knowledge of the nature, value and extent of the property affected by the [a]greement. [Stephen] fully disclosed the nature, approximate value and extent of his assets to [Thersia]. [Thersia] herself prepared the list of property for inclusion in the ante nuptial agreement. The parties acknowledged in the agreement their understanding of the assets. [Thersia] understood the terms of the agreement and the effect of the [a]greement on the rights of each party. Both parties were represented by competent counsel: Christopher Hunter for [Stephen] and Bill Lucco for [Thersia]. Christopher Hunter and Bill Lucco have considerable experience in complex family work. The agreement was the result of negotiation. The attorneys reviewed the documents, and multiple drafts and revisions were made over a period of weeks. The final draft is about twenty pages not counting the property lists, and each page that was included is initialed by both parties. The document is signed [by] both parties, and by one of the attorneys.

The court does not find credible [Thersia's] testimony that she did not read the document. A) [Thersia] acknowledged in the agreement itself, on a page she initialed, that she gave due consideration to all matters contained in the agreement, (Article VIII, p. 15, p. 8) which would not be expected if the agreement had not been read.

B) The agreement was the subject of numerous drafts, and that deliberation increases the likelihood that it was read. [Thersia] had ample opportunity to read the agreement prior to executing it. One who has an opportunity to read an ante nuptial contract before signing, but signs before reading, cannot later plead lack of understanding or that she was misled. *In re Marriage of Kloster*, 127 Ill. App. 3d 583, 469 N.E.2d 381 (2d Dist. 1984). C) [Thersia] had input into the agreement, which suggests she read and understood it. [Thersia] admitted she prepared [Stephen's] personal financial statement (May 24, 2007 transcript, p. 163) and contributed the lists to the agreement."

All the above findings support the court's findings as to the prenuptial's validity and are supported by the evidence.

¶ 25 The validity of the prenuptial agreement is not defeated or its acceptance by a party rendered involuntary by the pressure of an impending wedding or even the conditioning of the impending wedding taking place on the signing of the prenuptial agreement. *In re Marriage Barnes*, 324 Ill. App. 3d 514, 755 N.E.2d 522 (2001). Thersia argues that there is not sufficient evidence for a finding that there was a meeting of the minds and urges in support the depositions of their respective attorneys. We disagree. While the positions of the parties differed in the negotiations of the prenuptial agreement, the parties ultimately signed, with Thersia signing against advice of counsel. The question as to meeting of the minds is whether the minds of the signatories to the agreement met, not the minds of their counsel. We note again that it is not duress or coercion to condition the marriage upon the signing of a prenuptial agreement, and an agreement to marry constitutes sufficient consideration for that agreement. The findings of the trial court further indicate that Thersia knew the contents of the prenuptial agreement, understood it, and knew the extent of Stephen's property, as well as her own, and that she had read the document and had the

advice of skilled counsel. All of these findings are amply supported by the record and are not against the manifest weight of the evidence in this case.

¶ 26 Reformation of the Agreement

¶ 27 Thersia argues that the circuit court improperly reformed the prenuptial agreement by the addition of page nine and that its conclusions justifying reformation constitute error. Thersia argues that the finding concerning the missing page nine did not meet the standard of clear and convincing evidence, pointing specifically to the language of the court's May 23, 2008, order, stating:

"The most likely scenario is that everyone missed the missing page in the final copy to be signed, and that copy should not be seen as a different 'draft' or 'version' as such, because it was not intended to be any different from a 'version' containing the page."

Thersia further argues that the circuit court also improperly shifted the burden from the party seeking declaratory judgment and reformation, Stephen, to that of Thersia. We disagree.

¶ 28 The circuit court in a prior order, April 3, 2007, found:

"Court finds the ante nuptial agreement to be valid and enforceable, and that page 9 should be included, as its absence from the final draft was scrivener's error, or clerical error."

This finding was made after extensive testimony and consideration of the depositions of both parties' counsel, Lucco and Hunter, engaged in the negotiation leading up to the signing of the prenuptial agreement. This finding is supported by the record. The language attacked, "most likely scenario," comes from the subsequent ruling of the court, the order appealed from. Further, the record does not support Thersia's allegation that the only basis for the court's determination to reform the agreement comes from "the court's own confused comparison of two copies."

¶ 29 Thersia's argument as to the shifting of the burden of proof from Stephen to Thersia

is based upon the court's comment that it would reconsider its argument as to the validity and reformation of the prenuptial agreement if Thersia were able to obtain and present evidence to show that she never intended for page nine to be part of the agreement. In her brief, Thersia quotes the court:

" 'Mr. Fahrenkamp, if you can put together evidence which suggests that the [c]ourt's ruling with respect to the validity of the prenup was in error, [it] would like to resolve that before the conclusion of this case.' "

Both in her argument and in the quote from the court, it is clear that the court's remarks were made *after* its decision as to the prenuptial validity and reformation, not before, and further made in the context of reconsideration of its order. It was not error to require the party seeking reconsideration to meet a burden of proof as to reasons the court should reconsider. A trial court, in determining reformation of a contract, is reviewed under the standard of manifest weight of the evidence. *Suburban Bank of Hoffman-Schaumburg v. Bousis*, 144 Ill. 2d 51, 578 N.E.2d 935 (1991).

¶ 30 The hotly disputed page nine of the prenuptial agreement reads as follows:

"of the mutual covenants and agreements herein contained, Thersia will and does hereby waive, release and relinquish unto Stephen, his heirs, legatees, devisees: all of the property right, community estate, surviving spouse's award, homestead, dower, and rights to which she might otherwise be entitled under any laws, whether federal, state or otherwise, of the jurisdiction where the parties may be domiciled at the time of the death of Thersia; and all rights which she may have by virtue of the institution of any suit for dissolution of marriage or other legal action to cause the termination of the marriage of the parties or to cause a legal separation of the parties, if any, including future amendments to any such laws, in the real and personal estate which Stephen now possesses or hereafter may acquire, or in any manner may become

entitled to, or in which she may become vested by force of the contemplated marriage. Thersia further agrees at all times during the said marriage to Stephen to permit him to buy, sell, use, encumber, lease, control and otherwise manage his real and personal non-marital estate at his own separate discretion, free from interference or control by her, for whatever use he may determine and she hereby covenants and agrees that Stephen's said estate and property shall be free of any claim of herself and her heirs forever and she will not in any manner interfere with his actions therein, except to the extent she may be held personally liable for his debts under Illinois law. Thersia further agrees to take and"

A focus of the attack by Thersia on the inclusion of page nine is that it gives Stephen more rights than her. Specifically, the language cited by Thersia to make this comparison and alleged lack of mutuality is as follows:

"Thersia further agrees at all times during the marriage to Stephen to permit him to buy, sell, use, encumber, lease, control and otherwise manage his real and personal non-marital estate at his own separate discretion, free from interference or control by her ... and agrees that Stephen's said estate and property shall be free of any claim of herself ... forever and she will not in any manner interfere with his actions therein, except to the extent she may be held personally liable for his debts under the law."  
(Emphasis omitted.)

and

"Stephen further agrees at all times during the marriage to Thersia to permit her to buy, sell, use, encumber, lease, control and otherwise manage her real and personal estate at her own separate discretion, free from interference or control by him ... and agrees that Thersia's said estate and property shall be free of any claims of himself ... forever and he will not in any manner interfere with her actions therein, except to the

extent he may be held personally liable for his debts under the law." (Emphasis omitted.)

Thersia's argument is the language indicates a lack of reciprocal waiver and release by the parties and that it, in effect, put Thersia in a position that she would be waiving any right she could have against Stephen's nonmarital estate and corporations for any personal debt resulting from her indemnification of his corporations.

¶ 31 We find that the circuit court appropriately reformed the prenuptial agreement by inclusion of the page nine quoted above. In addition to the circuit court's findings as to reformation noted above, the court found that the above-quoted page nine fit "seamlessly" into the body of the prenuptial agreement. While Thersia was required to sign as a personal indemnitor for Stephen's corporations so the corporations could obtain bonding, there is no indication in the record that there was never any actual indemnification required of Thersia. The court found that this issue was immaterial and that the omission of page nine was of no consequence in the resolution of the case. Our examination of the record indicates that the circuit court's conclusion was not against the manifest weight of the evidence.

¶ 32 In sum, the circuit court's ruling in favor of Stephen on his declaratory judgment motion that the prenuptial agreement was valid and enforceable and that the agreement should be reformed to include the missing page nine was not against the manifest weight of the evidence.

¶ 33 **Consequences of Prenuptial Agreement**

¶ 34 Having found that the prenuptial agreement of the parties was valid and that the court appropriately reformed it by adding page nine, we now consider the arguments advanced by Thersia against the property assignments and distributions made by the circuit court pursuant to the prenuptial agreement. The following are the relevant provisions of the parties' prenuptial agreement concerning definitions and categorization of property as marital or

nonmarital. We note that in the submitted copies of the agreement by both parties, the language quoted below is the same:

"ARTICLE II  
PROVISIONS IN EVENT OF DISSOLUTION OR  
TERMINATION OF MARRIAGE OR IN THE EVENT OF LEGAL SEPARATION

In the event that marriage is entered into and solemnized by and between the parties hereto, and in the further event that thereafter, a Judgment of Dissolution of Marriage, a Judgment of Declaration of Invalidity of Marriage or Judgment of Legal Separation shall be entered in a proceeding between the parties hereto, then and in that event:

1. Stephen shall retain and shall be entitled to have set off and awarded to him as his sole and separate individual property, free and clear of any claim or interest thereto by Thersia, all of his 'non-marital' property, as the same is defined in Article VI of this Agreement, including, but not by way of limitation, all of those items which are specifically described in Exhibit A of this Agreement, attached hereto and by this reference made a part hereof. It is the intention of Stephen to segregate and keep separate all of his separate assets and income in order to keep the same as 'non-marital' property.

2. Thersia shall retain and shall be entitled to have set off and awarded to her as her sole and separate individual property, free and clear of any claim or interest thereto by Stephen, all of her 'non-marital' property, as the same is defined in Article VI of this Agreement, including, but not by way of limitation, all of those items which are specifically described in Exhibit B of this Agreement, attached hereto and by this reference made a part hereof. It is the intention of Thersia to segregate and keep separate all of her separate assets and income in order to keep the same as 'non-

marital' property.

3. Any items of property, whether real or personal, acquired by the parties subsequent to their marriage which are classified as 'marital' property, as the same is defined in Article VI of this Agreement, shall be divided in accordance with the provisions of this Article. It is the expressed intention of both of the parties that the only property which shall be subject to division is property defined herein as 'marital'.

[Emphasis in original.]

\* \* \*

## ARTICLE VI

### DEFINITION OF MARITAL AND NON-MARITAL PROPERTY

For the purposes of this Agreement, the following definitions shall apply:

A. NON-MARITAL PROPERTY SHALL MEAN:

1. Property acquired by gift, bequest, devise or descent, even if acquired from the other party to this Agreement, and whether acquired before or after the marriage of the parties to each other;

2. Property acquired by exchange, trade, or the proceeds of sale or other disposition of property acquired by gift, bequest, devise or descent, whether such was originally acquired before or after the marriage of the parties to each other;

3. Any and all property acquired by either party prior to their marriage to each other and any property received by exchange, trade, or the proceeds of sale or other disposition of such property together with any income or dividends received from any such property or from the proceeds of any such property;

4. Any property acquired by either party after the marriage, by using non-marital funds or assets, and which is placed in or acquired in the name of one of the parties individually;

5. Increase in value of the property owned individually by either party whether such property was acquired before or after the marriage of the parties to each other regardless of the reason for such increase in value;

6. All property and assets, listed in the parties' respective schedule of assets and liabilities attached hereto as Exhibits A and B together with any property or asset received by exchange, trade, or the proceeds of sale or other disposition of such property or asset and any income or dividends received from any such property or asset or from the proceeds of any such property or asset;

B. MARITAL PROPERTY SHALL MEAN:

Property acquired by the parties, individually or together, subsequent to the marriage, regardless of whether it is titled in some form of co-tenancy, except any of the property described in Paragraph A of this Article as 'non-marital' property regardless of when or how acquired."

¶ 35 The essence of Thersia's arguments against the circuit court's application of the prenuptial agreement is that the circuit court erroneously classified the personal efforts of the parties as nonmarital, including any effort she made that resulted in enhancement of the value of Stephen's nonmarital property. Thersia further argues that since increase in value resulted from these personal efforts, the possible millions of dollars that Stephen diverted from his nonmarital corporations' retained earning should properly be considered part of the marital estate and subject to distribution by the court.

¶ 36 We begin with the acknowledgment that while the Illinois Marriage and Dissolution of Marriage Act covers questions and circumstances such as those of the instant case, parties may agree to exempt themselves from the operation of the statute in applicable cases and determine various property rights and distribution of property for themselves. *Bergheger v. Boyle*, 258 Ill. App. 3d 413, 629 N.E.2d 1168 (1994). We further note that the circuit court

found the prenuptial agreement to be valid. As noted above, the circuit court applied the terms of that agreement and explained in detail why it defeated the arguments made by Thersia concerning personal efforts and any resulting increase in value of property still considered nonmarital according to the agreement. (See Article VI(A)(5) quoted above.) This section clearly indicates that any increase in value of any property owned individually by either party and designated as nonmarital would, in fact, be nonmarital "regardless of the reason for such increase in value." Accordingly, the circuit court found, and we agree, that there is no reimbursement owed to the marital estate arising from the increase in value of Stephen's nonmarital property, specifically his corporations.

¶ 37 In essence, Thersia's next argument is that any increase in value of the nonmarital corporations due to personal efforts of hers is appropriately assigned to the marital estate, so the trial court erred by finding that Stephen's diversion of funds from his corporations, retained earnings, and any other corporate funds for his personal use (boats, trips, etc.) was an expenditure of his nonmarital funds and not part of the marital estate. As noted in the paragraph above, the premise of Thersia's argument is incorrect. Article VI(A)(6) of the prenuptial agreement, quoted above, clearly includes income. In order to qualify as dissipation by a party, the funds so expended must properly be part of the marital estate. The trial court found, and we agree, that that is not the situation in the instant case. See *In re Marriage of O'Neill*, 138 Ill. 2d 487, 563 N.E.2d 494 (1990).

¶ 38 The Lake House

¶ 39 Thersia argues that a house on property at the Lake of the Ozarks, Missouri, 16 Ute Road, which was listed as nonmarital in the parties' list of assets was, in fact, gifted to Stephen during the marriage and that he admitted so on the stand. Normally such a gift of parent to child would be presumed nonmarital. See *In re Marriage of Wanstreet*, 364 Ill. App. 3d 729, 847 N.E.2d 716 (2006). But Thersia argues that this presumption is canceled

by the presumption that property acquired during marriage is marital and, accordingly, the circuit court assigning disputed property may make a decision without either presumption. *Wanstreet* involved an incremental sale or sale in stages that was not convincing. In the instant case, the tax return of Stephen's parent indicated that the transfer of the property on Ute Road was, in fact, a gift, and we are unable to say that the decision of the circuit court to assign the Ute Road property to Stephen as nonmarital due to its status as a gift was against the manifest weight of the evidence.

¶ 40 Thersia argues that the erroneous categorization of this property as premarriage nonmarital property indicates that Stephen's disclosures to Thersia were fraudulent and so the prenuptial agreement in which the disclosures were made should be determined not valid. Thersia cites section 7 of the Illinois Uniform Premarital Agreement Act (750 ILCS 10/7 (West 2002)) addressing the duty of an enforcing spouse to make a fair and reasonable disclosure of property. The circuit court, however, found no such fraud and, as we noted above, Thersia prepared the financial disclosure for Stephen. We cannot say that the circuit court's decision was against the manifest weight of the evidence.

¶ 41 The last matter we consider in our review of this appeal is the question of conscienability. We cannot say that the prenuptial agreement of the parties and the resultant assignment and distribution of substantial assets as marital and nonmarital was unconscionable. We note initially that the parties' marriage was just over six years in duration, and we have previously found that a six-year marriage is a marriage of short duration. *In re Marriage of Siddens*, 225 Ill. App. 3d at 500, 588 N.E.2d at 324. We also consider the extensive findings of the trial court noted above as to voluntariness of the formation of the prenuptial agreement found in our discussion of the validity of that contract. We note that these findings are not against the manifest weight of the evidence in the record before us. Both parties to the agreement were knowledgeable, and both were experienced

as to the properties encompassed in the agreement. In particular, Thersia knew from the clear language of the agreement that Stephen's holdings were substantially larger than hers and that upon dissolution of their marriage, the broad provisions of the nonmarital property characterization would apply to any distribution of property. The record indicates that Thersia was intimately involved in Stephen's businesses for a considerable period of time.

¶ 42 Another factor supporting our finding of conscienability is the ultimate award of the circuit court. The court awarded a higher percentage of marital property to Thersia, as opposed to Stephen. The court also awarded nonmodifiable maintenance in gross. The small size of the marital estate left for the court to distribute does not by itself indicate unconscionability in a situation such as this where the parties have opted out of application of the statute. See 750 ILCS 5/503(a) (West 2002); *In re Marriage Byrne*, 179 Ill. App. 3d 944, 535 N.E.2d 14 (1989). The circuit court concluded that Thersia came into this relationship, prenuptial agreement and all, with her eyes wide open, and the record before us indicates that conclusion is not against the manifest weight of the evidence.

¶ 43 Based on the above findings and reasons stated therefor, we affirm the judgment of the circuit court of Madison County.

¶ 44 Affirmed.