

NOTICE
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2014 IL App (5th) 130541-U

NO. 5-13-0541

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).

<i>In re</i> ESTATE OF GEORGE NORBERT SHERIDAN,)	Appeal from the
Deceased)	Circuit Court of
)	Jasper County.
(Mary I. Sheridan,)	
)	
Appellant,)	
)	
v.)	No. 12-P-5
)	
Janeth M. Hartrich, Independent Executor of the Estate)	
of George Norbert Sheridan, Deceased,)	Honorable
)	Daniel E. Hartigan,
Appellee).)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justice Chapman concurred in the judgment.
Justice Cates concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Trial court did not err by dismissing with prejudice fourth amended renunciation of will where surviving spouse, after five attempts, still could not state cause of action on any of the alleged counts and where most of surviving spouse's arguments on appeal have been forfeited or have no support in existing law.

¶ 2 Mary I. Sheridan, the surviving spouse of decedent George Norbert Sheridan, appeals the dismissal, with prejudice and by the circuit court of Jasper County, of her fourth amended renunciation of will. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The facts necessary to our disposition of this appeal are derived from the record on appeal, and are as follows. On April 22, 1991, Mary and George entered into a prenuptial agreement (agreement). The agreement provided, in pertinent part, that the real and personal property owned by each of them at the time of their marriage would remain their sole and absolute property, rather than becoming marital property, and that each waived the right to share in the estate of the other upon the death of the other. On April 27, 1991, they were married. George died on January 26, 2012, leaving a last will and testament that was dated June 29, 2004, and that, pursuant to the agreement, left George's entire estate to his sole surviving child, appellee Janeth M. Hartrich. On February 15, 2012, a petition for admission of the will to probate was filed. On June 5, 2012, Mary filed a renunciation of will by surviving spouse (renunciation). Janeth, as independent executor of the estate, filed a motion to dismiss the renunciation. The Honorable Ericka A. Sanders granted the motion, ruling that pursuant to statute, it was Mary's burden to prove the invalidity of the agreement, and that because the renunciation did not acknowledge the agreement, or in any way challenge the validity of the agreement, Mary failed to carry her burden; accordingly, the agreement trumped any statutory right Mary might have had to renounce George's will. Mary was granted leave to amend.

¶ 5 On November 15, 2012, Mary filed an amended renunciation. Janeth again moved to dismiss, this time alleging that the amended renunciation contained insufficient facts to state a cause of action. Following a hearing on the motion to dismiss, held on December 27, 2012, the Honorable Allen Bennett agreed with Janeth and dismissed the amended

renunciation. He too granted Mary leave to amend, telling her counsel "the more factual you can get in this kind of case in particular, the better I think you're going to be."

¶ 6 On January 18, 2013, Mary filed a second amended renunciation, which Janeth moved to dismiss on February 7, 2013. Following a hearing on the motion to dismiss, held on March 12, 2013, the Honorable William Robin Todd granted the motion, ruling that the second amended renunciation still did not contain sufficient factual allegations to state a cause of action that could invalidate the agreement. He granted Mary leave to amend and told her counsel, "I suggest you do everything in your power to allege everything that you can possibly allege." He added that counsel would "get a fourth bite at the apple," but that "there's going to come a point in time when some judge is going to say this is it." He posited, "I think we're getting close to that point."

¶ 7 On April 11, 2013, Mary filed a third amended renunciation, which Janeth moved to dismiss on May 8, 2013. Following a hearing on the motion to dismiss, held on June 18, 2013, the Honorable Daniel E. Hartigan dismissed the third amended renunciation, ruling that he was not persuaded by Mary's legal argument regarding a fiduciary relationship, that the disclosures of assets found in the agreement were fair and reasonable, and that the third amended renunciation, like its predecessors, did not contain factual allegations sufficient to state a cause of action that could invalidate the agreement. Over Janeth's objection, he granted Mary leave to amend yet again.

¶ 8 On July 17, 2013, Mary filed a fourth amended renunciation, which Janeth moved to dismiss on August 8, 2013. Following a hearing on the motion to dismiss, held on September 24, 2013, Judge Hartigan granted Janeth's motion, stating that Mary's pleading

still contained only conclusions, not factual allegations sufficient to invalidate the agreement. In a written order dated October 9, 2013, Judge Hartigan explained that all three counts of the fourth amended renunciation contained "insufficient legal and/or factual allegations" for the court to find the agreement invalid. Noting that Mary had now had five attempts to state a cause of action, and still had not done so, Judge Hartigan dismissed the fourth amended renunciation with prejudice. This timely appeal followed.

¶ 9

ANALYSIS

¶ 10 We review *de novo* the decision of a trial court pursuant to a motion to dismiss. *Gregory v. Farmers Automobile Insurance Ass'n*, 392 Ill. App. 3d 159, 161 (2009). We may affirm a dismissal "on any ground supported by the record, regardless of the basis for the trial court's decision." *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165 (2004). We first note the inadequacies of Mary's brief on appeal. It is axiomatic that the appellate court "is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented," and that this court "is not a repository into which an appellant may foist the burden of argument and research." (Internal quotation marks omitted.) *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). Pursuant to these principles, we may hold that a party to an appeal has forfeited the party's argument "by failing to develop it or cite any authority to support it." *Id.* That is because "it is neither the function nor the obligation of this court to act as an advocate or search the record for error," and because "[b]are contentions in the absence of argument or citation of authority do not merit consideration on appeal." *Overt v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Although this rule is occasionally relaxed when a party is *pro se*, in the case at bar there

is no reason for relaxation, as Mary is represented by counsel who has been licensed to practice law in this state since 1980. As discussed in more detail below, we conclude that many of Mary's arguments on appeal have been forfeited.

¶ 11 As a threshold matter, we address Mary's contention that counts I, II, and III of the fourth amended renunciation each state sufficient factual allegations to survive a motion to dismiss. Illinois is a fact-pleading jurisdiction, and so "requires a plaintiff to present a legally and factually sufficient complaint." *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 164-65 (2004). When ruling on a motion to dismiss, the trial judge must "admit all well-pleaded facts as true and disregard legal and factual conclusions that are unsupported by allegations of fact." *Id.* at 165. If after so doing, the judge determines that the complaint "does not allege sufficient facts to state a cause of action," the judge "must grant the motion to dismiss." *Id.* In her brief on appeal, Mary does not cite the above authority (or similar authority holding the same), and she makes no attempt to craft a cogent argument demonstrating how Illinois law regarding the sufficiency of a pleading would support a finding that counts I, II, and III state sufficient factual allegations to survive Janeth's motion to dismiss. Indeed, in her brief on appeal, Mary makes no attempt to demonstrate how and why each fact she has alleged is sufficient. Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). As explained above, in his written order dated October 9, 2013, Judge Hartigan ruled that all three counts of the

fourth amended renunciation contained "insufficient legal and/or factual allegations" for the court to find the agreement invalid. Because Mary has not adequately contested Judge Hartigan's ruling, we could affirm the circuit court on the basis stated in the circuit court's order. Nevertheless, in the interests of justice, we will entertain Mary's purported legal arguments, her failure to address on appeal the actual basis of Judge Hartigan's ruling notwithstanding.

¶ 12 Count I of the fourth amended renunciation alleges that the agreement is unenforceable because it was "unconscionable" when signed by the parties because it did not provide Mary "a truthful and complete disclosure of all of the property and of the financial obligations of George." As noted above, the agreement in this case was executed on April 22, 1991. Accordingly, it is governed by the Illinois Uniform Premarital Agreement Act (Act) (750 ILCS 10/1 *et seq.* (West 2012)), which applies to any prenuptial agreement executed on or after January 1, 1990. Section 7(a) of the Act provides that a prenuptial agreement is not enforceable if it was "unconscionable when it was executed," provided that certain other conditions are met. 750 ILCS 10/7(a)(2) (West 2012). One of those conditions is that the party seeking to avoid enforcement of the agreement on grounds of unconscionability must prove that the party "did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party." 750 ILCS 10/7(a)(2)(iii) (West 2012). In her brief on appeal, Mary does not cite this provision of the Act, and does not attempt to craft a cogent argument, based upon the allegations found in the fourth amended renunciation, that would support a finding that she did not have, or reasonably could not have had, an

adequate knowledge of George's property or financial obligations. Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Forfeiture notwithstanding, even if this court were to ignore long-established precedent and attempt to build an argument on appeal for Mary, there is simply no specific factual allegation in count I of the fourth amended renunciation explaining why Mary did not have, or reasonably could not have had, an adequate knowledge of George's property or financial obligations. To the contrary, with regard to section 7(a)(2)(iii), Mary's pleading simply states that she "did not have adequate knowledge of the property and debt of George Norbert Sheridan and reasonably could not have had adequate knowledge of the property and financial obligations of George Norbert Sheridan." She never attempts to explain why she reasonably could not have had an adequate knowledge of George's property or financial obligations, had she so desired. Her pleading amounts to a bare legal conclusion, devoid of a sufficient factual basis to withstand a motion to dismiss.

¶ 13 With regard to her count I unconscionability claim, Mary also contends that at the time the agreement was signed, and based solely upon the fact that Mary and George were engaged to be married, a confidential or fiduciary relationship existed between her and George that required George to make "full and complete disclosure" to her regarding his real and personal property. Again, Mary cites no authority for this proposition and makes no attempt to craft a cogent argument about how her purported theory comports

with, or diverges from, the above-cited provisions of the Act regarding claims of unconscionability. Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Forfeiture notwithstanding, even if we were to assume, *arguendo*, that some type of duty—beyond the Act and based instead upon a confidential or fiduciary relationship that existed between Mary and George because they were engaged to be married—might render the agreement unconscionable, that would not change the fact that even an unconscionable agreement is enforceable in Illinois unless the party seeking to avoid enforcement of the agreement on grounds of unconscionability proves that the party "did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party." 750 ILCS 10/7(a)(2)(iii) (West 2012). As noted above, Mary has not adequately argued this point on appeal and did not adequately plead with regard to it in the fourth amended renunciation. Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Moreover, we agree with Janeth that no reported decision of a court of review in Illinois can even remotely be construed to hold that Mary's theory might somehow supersede the Act, or replace the specific requirements of the Act with

some language not contained in the Act itself, and we decline to entertain such a notion. To the contrary, as our colleagues in the Second District recently held, "[t]he Act omits the previous common law requirements that an enforceable agreement must also be 'fair and reasonable' and must not result in an 'unforeseen condition of penury' for the party challenging the agreement," and therefore "the Act expresses a public policy of enforcing contracts as written absent evidence of fraud, duress, or lack of knowledge." (Internal quotation marks omitted.) *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 49. As the *Heinrich* court added, the Act "does not allow a court to invalidate a premarital agreement merely because it results in a disproportionate allocation of assets to one of the parties." *Id.*

¶ 14 Count I also alleges that the agreement is procedurally unconscionable. In her brief on appeal, however, Mary cites no authority, and presents no cogent argument, demonstrating how Illinois law would support a finding of procedural unconscionability with regard to each of the allegations in the fourth amended renunciation. Indeed, she does not even discuss the elements of a claim for procedural unconscionability. Moreover, as noted above, she does not address the requirements of the Act with regard to a claim for unconscionability: chiefly, that even if an agreement is unconscionable, the party seeking to avoid enforcement of the agreement on grounds of unconscionability must prove that the party "did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party." 750 ILCS 10/7(a)(2)(iii) (West 2012). Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the

contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing).

¶ 15 Count I further alleges that the agreement is substantively unconscionable because there existed "a gross disparity" between the assets of the parties at the time of the signing of the agreement. On appeal, Mary claims that because of this disparity in assets between her and George at the time the agreement was signed, a presumption exists that George "concealed or may have concealed the value of his property or the existence of all of his property." Even if we were to assume, *arguendo*, that the presumption invoked by Mary is operative under the Act and that the agreement is therefore substantively unconscionable, Mary still has not adequately addressed, on appeal or in her pleadings, the requirement of the Act, with regard to a claim for unconscionability, that even if an agreement is unconscionable, the party seeking to avoid enforcement of the agreement on grounds of unconscionability must prove that the party "did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party." 750 ILCS 10/7(a)(2)(iii) (West 2012). Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing).

¶ 16 Count II of the fourth amended renunciation seeks a modification of the agreement to provide support for Mary because of the unforeseen "undue hardship" she will suffer if

the agreement is enforced as written and as agreed to by the parties. In her brief on appeal, however, Mary does not cite any authority, and presents no cogent argument, demonstrating how her allegations would support a finding of unforeseen, undue hardship. Specifically, she makes no argument on appeal to support her contention that any hardship she might suffer was not foreseeable, particularly in light of the fact that since the day she signed the agreement she has known what it did and did not provide with regard to the parties' estates. Although Mary broadly claims that "[t]he law preserves the rights of surviving spouses to surviving spouses [*sic*] awards and other protection from the estate of their deceased spouse," Mary cites no authority in support of this proposition and in any case presents no cogent argument related thereto. Accordingly, Mary has forfeited the consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing).

¶ 17 Count III of the fourth amended renunciation alleges fraud and misrepresentation by George during the formation of the agreement. In her brief on appeal, however, Mary does not cite any authority related to a cause of action for fraud or misrepresentation—in fact she never discusses the elements of a cause of action for fraud or misrepresentation at all—and makes no effort to craft a cogent argument demonstrating how Illinois law would support a finding of fraud or misrepresentation with regard to each of the factual allegations in the fourth amended renunciation. Accordingly, Mary has forfeited the

consideration of this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Forfeiture notwithstanding, we agree with Janeth that with regard to count III, the fourth amended renunciation—which, like Mary's brief on appeal, does not even list the elements of a cause of action for fraud or misrepresentation, and in any event alleges no damages to Mary as a result of George's alleged fraud and misrepresentation—was inadequate to withstand a motion to dismiss.

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, we affirm the order of the circuit court of Jasper County.

¶ 20 Affirmed.

¶ 21 JUSTICE CATES, concurring in part and dissenting in part.

¶ 22 This case arises from a probate case in which Mary Sheridan, the surviving spouse of the decedent, George Sheridan, sought to renounce his will and take her statutory share of his estate under section 2-8 of the Probate Act of 1975 (755 ILCS 5/2-8 (West 2008)). The executor filed a motion to strike or dismiss the renunciation on the grounds that Mary Sheridan and the decedent had entered into a prenuptial agreement and that under the terms of the agreement, each party gave up his or her right to share in the other's

estate or take against the will. Mary Sheridan then alleged that the prenuptial agreement was unconscionable (count I), required modification (count II), and was fraudulent (count III). The circuit court dismissed all three counts of the fourth amended renunciation for lack of sufficient legal and/or factual allegations to support those claims, and this appeal followed. I agree with my colleagues that count II and count III of the fourth amended renunciation were properly dismissed, and I concur in that portion of the disposition. I cannot concur in the decision to affirm the trial court's dismissal of count I because I find that the allegations are sufficient to support the claim that the prenuptial agreement was substantively and procedurally unconscionable. Therefore, I respectfully dissent from that portion of the disposition.

¶ 23 A prenuptial agreement is a contract and is subject to the rules governing the interpretation of contracts. *In re Marriage of Best*, 387 Ill. App. 3d 948, 949, 901 N.E.2d 967, 968-69 (2009). A contract may be unenforceable if it is procedurally unconscionable, substantively unconscionable, or some combination of the two. *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 21, 857 N.E.2d 250, 263 (2006); *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 99, 854 N.E.2d 607, 622 (2006).

¶ 24 Procedural unconscionability generally involves some impropriety during the process of forming the contract that deprives a party of a meaningful choice. *Frank's Maintenance & Engineering, Inc. v. C.A. Roberts Co.*, 86 Ill. App. 3d 980, 989, 408 N.E.2d 403, 410 (1980). Factors to be considered include the circumstances surrounding the transaction, the manner in which the contract was entered into, whether each party had a reasonable opportunity to understand the terms of the contract, and whether the

contract contained fine print and convoluted language that concealed important terms and conditions. *Frank's Maintenance*, 86 Ill. App. 3d at 989-90, 408 N.E.2d at 410.

¶ 25 Substantive unconscionability is based on the actual terms of the contract and examines the relative fairness of the obligations assumed. *Kinkel*, 223 Ill. 2d at 28, 857 N.E.2d at 267 (quoting *Maxwell v. Fidelity Financial Services, Inc.*, 907 P.2d 51, 58 (Ariz. 1995)). Substantive unconscionability concerns whether the terms of a contract are harsh, oppressive, or so inordinately one-sided as to oppress or unfairly surprise an innocent party, and whether there is an overall imbalance in the obligations and rights imposed by the bargain. *Kinkel*, 223 Ill. 2d at 28, 857 N.E.2d at 267.

¶ 26 Whether a contract or a portion of a contract is unconscionable is a question of law for the court to decide and is reviewed *de novo*. *Kinkel*, 223 Ill. 2d at 22, 857 N.E.2d at 264. But, to the extent that the circuit court made findings of fact in the analysis of unconscionability, those factual findings are reviewed under the manifest weight of the evidence standard. See *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 777, 881 N.E.2d 396, 412 (2007).

¶ 27 In count I of the fourth amended renunciation, Mary Sheridan has alleged that the prenuptial agreement is not enforceable because it is procedurally unconscionable and substantively unconscionable. As to procedural unconscionability, Mary Sheridan alleges that the agreement was drafted by George Sheridan's attorney; that she was presented with only one version of the contract; that she had to sign the agreement within a few hours on the same day it was presented to her for signature; that she was not given the opportunity to negotiate changes or to investigate the true worth of George Sheridan;

that she did not know she had the right to negotiate the terms of the agreement; and that she was given no option but to sign the document. As to substantive unconscionability, Mary Sheridan alleges that there existed a gross disparity in the declared assets of the parties to the agreement in that George Sheridan listed more than \$505,000 in personal property, an unvalued farm and lake house, and \$48,000 in annual income, while she listed approximately \$22,000 in personal assets, a house in Olney, and \$13,680 in annual income; that George Sheridan did not provide a truthful and complete disclosure of his real estate holdings, checking accounts; and that despite 20 years of marriage to George Sheridan in a lifestyle that far exceeded her own personal means, certain legal rights, including the right to renounce the will, were forfeited.

¶ 28 In my view, Mary Sheridan has set forth factual allegations which, if proven, may establish that an impropriety in the process of forming the prenuptial agreement deprived her of a meaningful choice, and that the agreement is inordinately one-sided and shows a relative unfairness in regard to the obligations of the parties. I find that the allegations of procedural and substantive unconscionability are sufficient to set forth a claim that the premarital agreement is unconscionable and therefore unenforceable. I believe that the court erred in dismissing count I, and that this case should be remanded for limited discovery and an evidentiary hearing regarding the factual circumstances pertinent to the issue of the unconscionability of the prenuptial agreement.

¶ 29 For the reasons set forth above, I would affirm the dismissal of counts II and III, and I would reverse the circuit court's decision to dismiss count I and remand the case for further proceedings.