2015 IL App (2d) 140369-U
No. 2-14-0369
Order filed July 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DENISE R. POGUE,	)	Appeal from the Circuit Court
	)	of Boone County.
Petitioner-Appellant,	)	
	)	
and	)	Nos. 08-D-115
	)	11-D-137
	)	
DAVID A. POGUE,	)	Honorable
	)	Brendan A. Maher,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Plaintiff's appeal from trial court's order denying her motion for an interim contribution award would be dismissed for want of appellate jurisdiction as that order was not final and appealable; (2) reviewing court had jurisdiction to consider portion of petitioner's appeal from trial court order invalidating parties' postmarital agreements; and (3) parties' postmarital agreements were invalid on the basis of a lack of consideration as well as on the grounds of procedural and substantive unconscionability.

¶ 2 Petitioner, Denise R. Pogue, appeals *pro se* from two orders entered by the circuit court of Boone County in this dissolution of marriage case. The first order denied petitioner's request for an interim contribution award. The second order invalidated numerous postmarital

agreements between petitioner and respondent, David A. Pogue. For the reasons set forth below, we find that we lack jurisdiction to consider the trial court's ruling on the interim contribution award. However, we affirm the order invalidating the parties' postmarital agreements. Accordingly, we dismiss petitioner's appeal in part and affirm in part.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent married on February 16, 1999. On June 23, 2008, petitioner, acting *pro se*, filed in the circuit court of Boone County a "Petition for Legal Separation" (Separation Petition), which was docketed as case No. 2008-D-115. The Separation Petition sought a judgment of legal separation, an award and assignment of the property in petitioner's possession to her, an award and assignment of the property in respondent's possession to him, and an order that respondent pay certain debts and other obligations as set forth in the "attached settlement." However, no "settlement" was attached to the Separation Petition as it was originally filed with the court and the Separation Petition did not identify the date or dates of the alleged "settlement." On July 18, 2008, respondent filed a *pro se* appearance using a pre-printed form titled "Entry of Appearance, Waiver and Consent," in which he "consent[ed] that immediate default may be taken and entered * * * against [him]." The form filed by respondent does not indicate whether he had actually received or reviewed either a copy of the Separation Petition or the "settlement" referenced therein.

¶ 5 A hearing on the Separation Petition was held on July 23, 2008. Petitioner appeared at the hearing *pro se*. Respondent did not appear. No transcript of the July 23, 2008, hearing was included in the record on appeal. However, the docket entry for that date indicates that petitioner gave "sworn testimony" at the hearing, and, based upon that testimony, the trial court entered a judgment of separation by signing a five-page, pre-printed form prepared by petitioner. The

judgment of separation provided that petitioner and respondent entered into a written agreement dated July 8, 2008, which "resolve[d] between the parties all questions with regard to maintenance, custody, child support, medical and related needs and education, and their respective rights of property."[1] The judgment of separation further provided that the July 8, 2008, agreement "is approved, and the agreement and all of its provisions are incorporated into this Judgment with the same full force and effect as though the agreement and all of its provisions were written into this decretal part of this Judgment." Despite the foregoing language, the judge wrote the following on the final page of the judgment of separation:

> "The Court has not read nor has it adopted the entire 85 page agreement between the parties. This Court will retain jurisdiction over only those provisions specifically set out in the main order consisting of 5 pages. The Court will also enforce only those remaining issues involving the health and physical safety of the parties and other *major* provisions normally enforced in proceedings of this nature." (Emphasis in original.)

It is not clear from the record to which "agreement" the court was referring, as the record does not contain an 85-page document. However, included in the record immediately after the judgment of separation is a 126-page document entitled "Agreement Between Parties," which includes, *inter alia*, the following: (1) a 20-page document dated July 7, 2008, and signed by the parties on July 8, 2008; (2) an 88-page document dated May 26, 2008, and signed by the parties on May 31, 2008; (3) a 13-page document dated May 23, 2008, and signed by the parties on May 24, 2008; and (4) three durable powers of attorney. Neither party took an appeal from the July 23, 2008, judgment of separation.

[1] Although the judgment of separation references custody and child support, the parties did not have any minor children at any time relevant to the proceedings herein.

¶ 6 On July 26, 2011, petitioner filed *pro se* a petition for dissolution of marriage (Dissolution Petition), which was docketed as case No. 2011-D-137. In the Dissolution Petition, petitioner asserted that she is permanently disabled and unemployed. She sought a wide range of relief, some of which is within the scope of a typical dissolution proceeding, *e.g.*, maintenance and property division, and some of which is based on alleged agreements between her and respondent. Petitioner attached to the Dissolution Petition nine pages of "Agreements/Contracts Between Parties," all of which were dated in either 2010 or 2011. On September 21, 2011, respondent filed a counter-petition for dissolution of marriage. Thereafter, on its own motion, the court consolidated case No. 2008-D-115 (involving the Separation Petition) with case No. 2011-D-137. Between October 2011 and October 2013, the parties engaged in discovery and motion practice, made regular appearances before the court for status and case-management conferences, and attended hearings on issues such as maintenance, attorney fees, and allegations of contempt.

¶ 7 Meanwhile, on August 29, 2012, respondent filed a "Motion to Invalidate the Postmarital Agreements." In his motion, respondent alleged that the parties executed a postmarital agreement on May 4, 2008, and addendums on May 4, 2008, May 26, 2008, and May 14, 2011. Respondent argued that the agreements should be invalidated due to unconscionability and lack of consideration.[2]

[2] Respondent did not attach copies of the postmarital agreements to his motion. Elsewhere in the record, we have located copies of the May 26, 2008, and May 14, 2011, agreements. However, the record does not contain a copy of the May 4, 2008, postmarital agreement or the addendum thereto, and petitioner suggested at a hearing in this matter that those documents were "tossed * * * out."

¶ 8 On November 28, 2012, petitioner filed an "Amended Petition for an Interim Contribution Award" pursuant to sections 501(c-1) and 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(c-1), 508(a) (West 2012)) (Contribution Petition). In the Contribution Petition, petitioner sought a contribution from respondent for her legal fees and costs. A hearing was held on the Contribution Petition on July 11, 2013, following which the matter was taken under advisement. On August 14, 2013, the trial court entered an order denying the Contribution Petition "at this time." On September 9, 2013, petitioner filed a motion to reconsider the trial court's denial of the Contribution Petition.

¶ 9 On October 18, 2013, the court conducted a hearing limited to whether one or more of the parties' postmarital agreements were enforceable in connection with the pending dissolution proceedings. At the hearing, the following series of postmarital agreements signed by petitioner and respondent were admitted into evidence: (1) a 13-page, handwritten agreement dated May 23, 2008; (2) an 88-page, handwritten agreement dated May 26, 2008; (3) a 20-page, handwritten agreement dated July 7, 2008; (4) a one-paragraph, typewritten document dated April 10, 2010, in which respondent agreed to pay "the current weekly car rental" for his adult children; (5) a one-page, typewritten "Confidentiality Agreement" dated January 29, 2011, in which respondent agreed to keep private "any and all information" about petitioner, the parties' children, and various other individuals; (6) a one-page, typewritten document dated June 29, 2011, in which respondent agreed to make certain payments to respondent; (7) a one-page, typewritten document dated February 12, 2011, in which respondent agreed to pay for certain "cosmetic/elective surgeries" petitioner might have at any time before her death; (8) a one-page, typewritten "Business Contract/Agreement" dated February 12, 2011, which obligated respondent to make petitioner his "partner" in any business ventures of which he is part; (9) a

one-page, typewritten "Private Contract" dated March 5, 2011, in which respondent agreed to buy certain specified items for petitioner by certain dates in the future; (10) a one-paragraph, typewritten document dated May 14, 2011, in which respondent agreed to pay "alimony" to petitioner in the amount of $375 per week beginning on June 3, 2011; (11) a one-page, typewritten document dated July 9, 2011, in which respondent agreed to save money for petitioner's benefit, to make other payments in the future, to provide certain information to petitioner in the future, and to "never contest" the document at any time; and (12) a one-page, typewritten document dated July 9, 2011, in which respondent agreed to provide a vehicle to petitioner until January 1, 2020, to "never contest" the agreement, and to provide petitioner with information about respondent's mother's death and any inheritance he ever receives from his mother.

¶ 10 At the hearing, respondent testified regarding a variety of topics, including his understanding of the postmarital agreements, the periods of time the parties cohabitated, and the consideration, if any, for the postmarital agreements. For instance, respondent testified that he "can't read" very well, and that, to the extent that he can comprehend some writing, it is primarily typed writing. Respondent also testified that he signed all of the postmarital agreements, which petitioner drafted without his input, after petitioner read each document to him. Respondent related that, for the most part, he did not understand what he was signing. Respondent also stated that he felt as if he was "forced" by petitioner into signing the postmarital agreements. In this regard, respondent explained that petitioner told him that she knew the law because she went to school to be a paralegal. Respondent further explained that petitioner told him that the judge would "have more pity" on her because she has a disability and that he would therefore rule in her favor. Petitioner, acting *pro se*, was sworn and gave a combination of

testimony, statements, and argument regarding the postmarital agreements. Among other things, petitioner testified that she wrote the terms of the postmarital agreements only after discussing and negotiating them with respondent. Petitioner denied that she forced respondent into signing the postmarital agreements or that she had to read the documents to respondent. She acknowledged, however, that neither party was represented by an attorney when the agreements were signed.

¶ 11 On January 15, 2014, the trial court entered a written order finding that the postmarital agreements fail for either lack of consideration, procedural unconscionability, substantive unconscionability, or a combination of these reasons.[3] The court found that respondent testified "credibly" regarding his "borderline illiteracy" and the circumstances surrounding the execution of the postmarital agreements. In this regard, the court found credible respondent's testimony that he signed the postmarital agreements after petitioner read each document to him, that, for the most part, he did not understand what he was signing, and that he felt "forced" into signing the postmarital agreements. In support of its ruling, the court wrote:

> "[T]he Court notes that none of the Agreements expressly recite that one or the other party is entering the agreement with the expectation that the other party will not file for legal separation or for dissolution for any specific period of time. Neither party testified that their discussions, to the extent that discussions took place, contemplated forbearance from filing petitions in court, and the chronology of the documents indicates that the

[3] The trial court found that petitioner lacked standing to enforce the April 10, 2010, "agreement," because it was between respondent and his adult children. Petitioner does not expressly challenge this finding on appeal. Therefore, we do not address the propriety of the ruling with respect to the April 10, 2010, agreement.

parties signed paperwork before and after the legal separation was filed, and before and after the dissolution petition was filed.

More importantly, the Court notes that none of the agreements expressly impose any obligation(s) upon [petitioner]; they are all entirely one-sided, imposing obligations on [respondent] only, and benefits on [petitioner] only (*i.e.*, promises to make gifts in the future). The Court has searched in vain for any promise by [petitioner] to do something she is not already required to do, or to hold off—forbear—from doing something she is entitled to do. Simply stated, there are no 'costs' imposed upon [petitioner] by any of the Agreements in terms of her time, her effort or her money, and there is no benefit conferred on [respondent] by any of the Agreements.

Instead, the Agreements purport to impose on [respondent] almost limitless financial liability (above and beyond the payment of 'alimony,' which is also required), including an express promise that he will never make an attempt to discharge any of those limitless obligations in a bankruptcy proceeding. Many of [respondent's] 'agreements' or 'promises' are entirely subject to [petitioner's] discretion, to be exercised at undetermined points in the future, and requiring [respondent] to buy items of [petitioner's] choosing with no regard to the cost, with no regard to [respondent's] ability to make the purchase, and with no direct consideration of any other obligation [respondent] is alleged to have accepted under the Agreements as a whole (*e.g.*, '[Respondent] agrees to do all, pay all and adhere to all above for the rest of [petitioner's] life, and as many times as needed and asked by [petitioner].'). In addition, [respondent] is alleged to have agreed to pay fines to [petitioner] if, in [petitioner's] opinion, [respondent] engages in 'poor behavior' (*e.g.*, $5,000 fine if [respondent] is 'asked to

> leave because of his poor behavior.'). Moreover, in addition to the multitude of open-ended financial obligations [respondent] allegedly agreed to accept, the Agreements also purport to require [respondent] to perform a variety of services for [petitioner] and for the parties' adult children after the parties are divorced."

On its own motion, the court included in the January 15, 2014, order, language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), that "there is no just reason for delaying either enforcement or appeal or both."

¶ 12 On February 12, 2014, petitioner filed a motion to reconsider the trial court's order of January 15, 2014. On March 19, 2014, the trial court denied petitioner's motion to reconsider the order of January 15, 2014. In the same order, the court also denied petitioner's September 9, 2013, motion to reconsider the order of August 14, 2013, denying her Contribution Petition. At petitioner's request, the court included language pursuant to Rule 304(a) with respect to its ruling on the Contribution Petition. On April 16, 2014, petitioner filed a *pro se* notice of appeal from the order denying her Contribution petition, the order granting respondent's motion to invalidate the postmarital agreements, and the order denying her request for reconsideration of those two orders.

¶ 13 II. ANALYSIS

¶ 14 A. Contribution Petition

¶ 15 On appeal, we first address petitioner's claim that the trial court erred in denying her Contribution Petition. In support of her argument, petitioner asserts that, even as a *pro se* litigant, she was entitled to an interim award of attorney fees to "level the playing field." Respondent argues that this court lacks jurisdiction to consider the trial court's ruling on the Contribution Petition because a decision on a temporary-fee issue does not constitute a final and

appealable order. Alternatively, respondent contends that petitioner's argument fails on the merits because: (1) petitioner was seeking attorney fees for herself; and (2) he had no greater ability than petitioner to pay for any legal fees. We agree with respondent that we lack jurisdiction to consider the propriety of the trial court's ruling on the Contribution Petition.

¶ 16 Subject to statutory or supreme court rule exceptions, our jurisdiction is limited to reviewing appeals from final judgments. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989); see also Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) ("Every final judgment of a circuit court in a civil case is appealable as of right."); Illinois Supreme Court Rule 303 (eff. June 4, 2008) (setting forth the procedure for perfecting an appeal from a final judgment of the circuit court in a civil case). A judgment is final for purposes of appeal if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Verdung*, 126 Ill. 2d at 553.

¶ 17 The Contribution Petition was brought pursuant to section 501(c-1) of the Act (750 ILCS 5/501(c-1) (West 2010)). Section 501 provides for *temporary* relief in dissolution proceedings, including interim awards of attorney fees. 750 ILCS 5/501 (West 2010). Because a trial court's assessment of an interim contribution award is temporary, it is "without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award." 750 ILCS 5/501(c-1)(2) (West 2010). Moreover, a temporary order entered under section 501 "may be revoked or modified before final judgment, on a showing by affidavit and upon hearing" and "terminates when the final judgment is entered or when the petition for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed." 750 ILCS 501(d) (West 2010). Because interim contribution awards provide only temporary relief during dissolution proceedings, they are treated as interlocutory orders and are

not subject to appeal. See *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 45; *In re Marriage of Johnson*, 351 Ill. App. 3d 88, 96 (2004); *In re Marriage of Olesky*, 337 Ill. App. 3d 946, 950 (2003); *In re Marriage of Tetzlaff*, 304 Ill. App. 3d 1030, 1039 (1999). Here, the record does not indicate that a final judgment of dissolution has been entered in this case. Thus, the trial court order denying the Contribution Petition remains a temporary order subject to revision. Indeed, the trial court acknowledged as much when it wrote in the order that it was denying petitioner's request for an interim contribution award "at this time." Therefore, we lack jurisdiction to consider the trial court's ruling on the Contribution Petition. We note that the inclusion of language pursuant to Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) in the order denying petitioner's motion to reconsider does not alter our conclusion since a nonfinal order cannot be made final simply by including a finding that the order is final and appealable. See *DeLuna v. St. Elizabeth's Hospital*, 147 Ill. 2d 57, 76 (1992) (noting that an order dismissing an action without prejudice is not final and cannot be made so simply by including a Rule 304(a) finding); *In re Marriage of Leopando*, 96 Ill. 2d 114, 119-20 (1983) (holding that because a dissolution proceeding advances only a single claim (a request for an order dissolving the parties' marriage), a ruling on any issue ancillary to the principal claim is not appealable under Rule 304(a), which applies only when multiple claims exist). Accordingly, we dismiss that portion of petitioner's appeal challenging the trial court's ruling on her Contribution Petition.

¶ 18 B. The Postmarital Agreements

¶ 19 Petitioner also challenges the trial court's decision to grant respondent's motion to invalidate the postmarital agreements. Before we reach the merits of petitioner's argument, we address the issue of our jurisdiction. Although neither party contests jurisdiction with respect to this issue, we have an independent duty to confirm our jurisdiction and dismiss an appeal, or

portion thereof, if jurisdiction is lacking. *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999 (2003).

¶ 20 In *Leopando*, 96 Ill. 2d 114, the supreme court addressed the appealability of a custody order in a dissolution proceeding. In that case, the trial court awarded permanent custody of the parties' minor child to the husband. The trial court reserved for future consideration the issues of maintenance, property division, and attorney fees. The custody order contained a written finding in accordance with Rule 304(a) that there was no just reason to delay enforcement or appeal of the order. On appeal, the supreme court addressed whether the trial court's order was final and appealable. As noted above, the court held that a petition for dissolution of marriage advances a single claim—a request for an order dissolving the parties' marriage. *Leopando*, 96 Ill. 2d at 119. Thus, the court reasoned, the numerous other issues raised in a dissolution proceeding, including custody, are not separate claims; they are merely ancillary to the principal cause of action. *Leopando*, 96 Ill. 2d at 119-20. Since a dissolution proceeding constitutes only one claim, a ruling on any issue ancillary to the principal claim is not appealable under Rule 304(a), which applies only when multiple claims exist. *Leopando*, 96 Ill. 2d at 119-20. The *Leopando* court emphasized that its holding furthered the purpose behind Rule 304(a), *i.e.*, discouraging piecemeal appeals. *Leopando*, 96 Ill. 2d at 119-20.

¶ 21 *Leopando* would appear to foreclose consideration of the order invalidating the postmarital agreements since the trial court has yet to enter a final dissolution order in this case. However, in *In re Marriage of Best*, 228 Ill. 2d 107, 119 (2008), the supreme court held that a reviewing court may consider the validity and effect of a declaratory judgment order addressing the validity of a premarital agreement, even if it is entered before the final dissolution order, so long as the prerequisites of the declaratory judgment statute (735 ILCS 5/2-701 (West 2004)) are

met.

¶ 22 In *Best*, the parties entered into a premarital agreement. Two years after the parties' wedding, the husband petitioned for dissolution of the marriage. The husband later moved for a declaratory judgment, seeking a ruling concerning the validity and construction of the premarital agreement. The declaratory judgment motion was not filed as a separate action, but as part of the dissolution case. Following a hearing, the trial court found the premarital agreement to be valid and enforceable. The declaratory judgment order was entered prior to any judgment of dissolution and contained language pursuant to Rule 304(a) that it was final and appealable. While the underlying dissolution proceeding remained pending, the husband appealed.

¶ 23 The *Best* court held that even in the absence of a final dissolution order, a reviewing court has jurisdiction, pursuant to Rule 304(a), to review the trial court's ruling in a declaratory judgment action as long as the requirements of the declaratory judgment statute (735 ILCS 5/2-701 (West 2004)) have been met. *Best*, 228 Ill. 2d at 113-19. In so holding, the court acknowledged its holding in *Leopando* that a dissolution proceeding advances only a single claim, and, therefore, a ruling on any issue ancillary to the principal claim is not appealable under Rule 304(a). *Leopando*, 96 Ill. 2d at 113-14. However, the court found *Leopando* to be distinguishable. *Best*, 228 Ill. 2d at 113-15. Significantly, the court determined that the declaratory judgment order in *Best* did not make any actual award in the pending dissolution case, but determined only the validity of the parties' premarital agreement. *Best*, 228 Ill. 2d at 114. The court further explained that the husband in *Best* advanced two requests for relief with two distinct statutory bases, *i.e.*, nondeclaratory relief under the Act and declaratory relief under the declaratory judgment statute (735 ILCS 5/2-701 (West 2004)). *Best*, 228 Ill. 2d at 115. The court pointed out that if the statutory requirements were satisfied, the husband's request for

declaratory relief could be entered even if the dissolution petition was not granted. *Best*, 228 Ill. 2d at 115. For these reasons, the supreme court concluded that the request for dissolution of the parties' marriage and the request for declaratory judgment on the validity of the premarital agreement were not so closely related that they must be deemed part of a single claim for relief, as was the case in *Leopando*. *Best*, 228 Ill. 2d at 115. Moreover, in the court's view, the ruling on the premarital agreement terminated a significant part of the dissolution matter and satisfied the termination of controversy requirement in the declaratory judgment statute. *Best*, 228 Ill. 2d at 116-18.

¶ 24 In the present case, we are not dealing with a premarital agreement. Moreover, respondent's "Motion to Invalidate the Postmarital Agreements" was not expressly filed as a declaratory judgment action. Nevertheless, it is clear that the intent of respondent's motion was to seek a declaration regarding the validity of the postmarital agreements. Therefore, we find the motion analogous to the declaratory judgment action involving the premarital agreements at issue in *Best*.

¶ 25 In *Best*, the court found that a declaratory judgment of the parties' rights under the premarital agreement would be proper if: (1) there is an actual controversy; and (2) entry of a declaratory judgment would terminate "some part" of that controversy. *Best*, 228 Ill. 2d at 117. As in *Best*, we find that both of these requirements have been satisfied here. It is undisputed that an actual controversy exists between the parties, thereby satisfying the first prong. In addition, we find that the trial court's ruling on respondent's motion would end "some part" of the parties' controversy, and therefore constitutes a final order. Notably, the ruling involves whether the postmarital agreements control "various facets of the parties' rights in the pending dissolution proceeding." See *Best*, 228 Ill. 2d at 117. Indeed, a finding that the trial court's ruling on

respondent's motion was not final also has the potential to impede judicial economy. If we were to defer consideration of the ruling, the trial court would presumably enter an order dissolving the parties' marriage and resolving any ancillary issues (*e.g.*, maintenance, property distribution, and attorney fees) in accordance with its finding that the postmarital agreements are invalid. However, if petitioner files an appeal from the order of dissolution and successfully challenges the trial court's ruling on the validity of the postmarital agreements, the trial court would have to revisit the ancillary issues in accordance with the terms of the postmarital agreements. Thus, considerations of judicial economy also inform our finding that the trial court's ruling would end "some part" of the parties' controversy and, therefore, was a final order. Finally, we note that the trial court included Rule 304(a) language in the order granting respondent's motion, thereby rendering the order appealable. *Best*, 228 Ill. 2d at 113-15; see also *In re Marriage of Heinrich*, 2014 IL App 2d 121333, ¶ 33 (noting that declaratory judgment order addressing validity of premarital agreement was final when order was entered but was not appealable until the trial court made a finding pursuant to Rule 304(a)). Under these circumstances, we find that we have jurisdiction to address petitioner's challenge to the trial court order invalidating the parties' postmarital agreements. We turn to that issue now.

¶ 26 The trial court ruled that the postmarital agreements fail for either lack of consideration, procedural unconscionability, substantive unconscionability, or a combination of these reasons. On appeal, petitioner challenges the trial court's findings. Although petitioner's argument is not entirely clear, she seems to argue that, given her station in life, the trial court's ruling was unfair. In this regard, petitioner asserts that "it is against public policy to have ten [*sic*] postnuptial agreements that protect a wife from destitution, only to have all of them found invalid and to force [her] to seek any and all public assistance she can qualify for." Petitioner further asserts

that she relied on the promises respondent made to her in the postmarital agreements and that she finds nothing unconscionable about them. Respondent contends that the trial court's decision to invalidate the postmarital agreements on the grounds of lack of consideration, procedural unconscionability, and substantive unconscionability is supported by the evidence and by relevant case law. We first address the court's finding that the postmarital agreements fail for lack of consideration.

¶ 27 1. Consideration

¶ 28 The basic requirements of a contract are an offer, an acceptance, and consideration. *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 770 (2007). Whether a contract contains consideration is a question of law which we review *de novo*. *Dohrmann v. Swaney*, 2014 IL App (1st) 131524, ¶ 23; *In re Marriage of Tabassum*, 377 Ill. App. 3d at 770; *Russell v. Jim Russell Supply, Inc.*, 200 Ill. App. 3d 855, 861 (1990). Consideration is defined as a bargained-for exchange of promises or performance. *In re Marriage of Tabassum*, 377 Ill. App. 3d at 770; see also Black's Law Dictionary 300 (7th ed. 1999) (defining "consideration" as "[s]omething of value (such as an act, a forbearance, or a return promise) received by a promisor from a promisee.").

¶ 29 After reviewing the postmarital agreements at issue in this case, we agree with the trial court's conclusion that they fail for lack of consideration. As the trial court found, none of the agreements expressly impose any obligation upon petitioner. Rather, the postmarital agreements are entirely one-sided, imposing obligations solely upon respondent and benefits solely upon petitioner. For instance, the postmarital agreements contain provisions requiring respondent to perform various tasks for petitioner (*e.g.*, take care of garbage removal and yard care, change the oil in petitioner's vehicles, transport her to various appointments). If respondent is unable to

perform these tasks, he must hire someone to do them for petitioner. Moreover, most of these provisions require respondent to complete the assigned tasks at respondent's "total costs" and to petitioner's "total satisfaction," for the rest of her life whether she remarries or not. Representative of these provisions is the following from the postmarital agreement dated May 23, 2008:

> "[Respondent] agrees to pay for, at his total costs, any and all of [petitioner's] vehicle/vehicles, repairs/maintenance for any and all vehicles she ever owns/uses for her needs, for any reason, at any time, and as many times as [petitioner] asks. These repairs may include, but will not be limited to, cosmetic repairs (hubcap replacement, rust removal, windshield repair, inside ceiling repair, torn seat repair, inside carpet restoration), transmission, tune-ups, oil changes, radiator repairs/replacement, muffler replacement, brakes, battery, starter, alternator, car latches, and any and all else that [petitioner] ever asks to be repaired/maintained/replaced with new. [Respondent] agrees to at *all* times, make sure, at his total costs, that [petitioner] has a clean, safe, *always* running vehicle at her disposal and that its windows/latches/heat and air-conditioning and radio always work well. [Respondent] agrees to do/pay/adhere to all above for the rest of [petitioner's] life even if she remarries. This includes replacing and maintaining her wheelchair lift and car shocks and springs that support it." (Emphasis in original.)

Other provisions require respondent to grant petitioner access to his tax returns, financial records, and medical records. Still other provisions require respondent to purchase or pay for a variety of items of petitioner's choosing, including, various household appliances, magazine subscriptions, electronics, furniture, insurance products, firewood, a hammock, lawn-maintenance equipment, security equipment, medical expenses, fire extinguishers, window

coverings, paint, tools, vacations, and holiday decorations. Another provision of the postmarital agreements requires respondent to pay a fine, if, in petitioner's opinion, respondent engages in "poor behavior." The postmarital agreements also require that respondent keep his family members and significant others away from petitioner and the parties' adult children and that he provide petitioner with contact information so that he is "available and reachable at all times and from any and all locations he is at."

¶ 30 As is evident from the preceding paragraph, the postmarital agreements do not contain a bargained-for exchange of promises or performance. Rather, as the trial court determined, they impose obligations solely upon respondent and benefits solely upon petitioner. Accordingly, we affirm the trial court's finding that the postmarital agreements fail for lack of consideration and are therefore unenforceable.

¶ 31 2. Unconscionability

¶ 32 We also consider whether the postmarital agreements are unenforceable based on unconscionability. Unconscionability may be procedural, substantive, or some combination of the two. *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 21 (2006). Procedural unconscionability consists of some impropriety during the process of forming the contract depriving a party of meaningful choice. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 60 (2011). Factors to be considered in determining whether an agreement is procedurally unconscionable include whether each party had the opportunity to understand the terms of the contract, whether important terms were hidden in a maze of fine print, and all of the circumstances surrounding the formation of the contract. *Phoenix Insurance Co.*, 242 Ill. 2d at 60. " 'Substantive unconscionability concerns the actual terms of the contract and examines the relative fairness of the obligations assumed.' " *Kinkel*, 223 Ill. 2d at 28 (quoting *Maxwell v.*

Fidelity Financial Services, Inc., 907 P. 2d 51, 58 (Ariz. 1995)). Substantive unconscionability occurs when terms are so one-sided as to oppress or unfairly surprise an innocent party. *Phoenix Insurance Co.*, 242 Ill. 2d at 60. Whether a contract is unconscionable is a question of law subject to *de novo* review. *Kinkel*, 223 Ill. 2d at 22. However, to the extent that the trial court's determination is based on findings of fact, we will not overturn those findings unless they are against the manifest weight of the evidence. *In re Marriage of Tabassum*, 377 Ill. App. 3d at 775.

¶ 33 In the present case, we hold that the postmarital agreements are both procedurally and substantively unconscionable. With respect to the issue of procedural unconscionability, respondent testified that he "can't read" very well, and that, to the extent that he can comprehend some writing, it is primarily typed writing. Respondent also testified that he signed all of the postmarital agreements, which petitioner drafted without his input, after petitioner read each document to him. Respondent related that, for the most part, he did not understand what he was signing. Respondent also stated that he felt as if he was "forced" by petitioner into signing the postmarital agreements. In this regard, respondent explained that petitioner told him that she knew the law because she went to school to be a paralegal. Respondent further explained that petitioner told him that the judge would "have more pity" on her because she has a disability and he would therefore rule in her favor. Petitioner claimed that she drafted the postmarital agreements only after discussing and negotiating their terms with respondent. She denied that she had to read the documents to petitioner or that she forced him into signing the agreements. The trial court found that respondent testified credibly about the circumstances surrounding the drafting and signing of the postmarital agreements. As the trier of fact, the trial court was in the best position to judge the credibility of the witnesses and resolve conflicts in the testimony. *In re*

Marriage of Arjmand, 2013 IL App (2d) 120639, ¶ 35. Accordingly, we decline to disturb the trial court's factual findings. Furthermore, in light of the trial court's factual findings regarding respondent's ability to read, his lack of understanding of the terms of the agreements, and the circumstances surrounding the formation of the agreements, we conclude that the postmarital agreements were procedurally unconscionable.

¶ 34 In addition, as discussed in relation to the consideration issue, the postmarital agreements do not contain a bargained-for exchange of promises or performance. Rather, they impose obligations solely upon respondent and benefits solely upon petitioner. As such, we find that they are so one-sided as to oppress respondent. Accordingly, we conclude that the postmarital agreements are also substantively unconscionable.

¶ 35 III. CONCLUSION

¶ 36 For the reasons set forth above, we dismiss petitioner's appeal from the order of the circuit court of Boone County denying her Contribution Petition. However, we determine that we have jurisdiction to consider the order of the trial court invalidating the parties' postmarital agreements. Moreover, we find that the postmarital agreements fail for a lack of consideration as well as on the grounds of procedural and substantive unconscionability. Accordingly, we affirm the trial court order invalidating the postmarital agreements.

¶ 37 Appeal dismissed in part and affirmed in part.