

No. 14-3357

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN RE THE MARRIAGE OF WANGER,)	Appeal from the Circuit Court
)	of Cook County.
(Leonard Ralph Wanger,)	
)	
Petitioner-Appellant,)	
)	No. 11 D 4364
v.)	
)	
Elizabeth Wanger,)	
)	Honorable Timothy P. Murphy
Respondent-Appellee.))	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in finding a prenuptial agreement to be unenforceable. Because the husband did not make a fair and reasonable disclosure of his assets prior to the execution of the agreement, under California law, the agreement is deemed to be unconscionable and, therefore, cannot be enforced.

¶ 2 This case concerns the validity of a prenuptial agreement executed before the parties got married. The husband filed for dissolution of the marriage and he wants the prenuptial agreement enforced, while the wife does not. The trial court found that the husband concealed a number of

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his assets from the wife and concluded that it would be unconscionable for the court to enforce the agreement. We affirm.

¶ 3

BACKGROUND

¶ 4 Petitioner Leonard Wanger married Respondent Elizabeth Wanger on November 7, 1998 in California. The day before they married, they executed a prenuptial agreement setting forth their intentions with respect to their property and support obligations in the event that the marriage was later dissolved. Both parties were represented by counsel, and both parties acknowledge that they entered into the agreement voluntarily. The agreement sets forth that it is governed by California law and the parties assent to its application.

¶ 5 One provision of the agreement required petitioner to set forth his separate assets in an exhibit to the agreement. The exhibit is one page and lists seven bank and investment accounts, six separate securities holdings, one company, and the equity in one real property holding. The agreement also references certain estate planning documents that were executed in anticipation of their marriage. The parties set up the 1998 Wanger Family Revocable Trust and the 1998 Wanger Family Irrevocable Trust, and they each executed a durable power of attorney appointing the other as their attorney in fact in case of incapacity. The agreement provides that if the parties' marriage is dissolved after 11 years (the period applicable here), respondent would receive a one-time payment in lieu of spousal support in the amount of \$250,000.

¶ 6 After filing for divorce, petitioner sought a declaratory ruling, asking the trial court to preemptively find that the prenuptial agreement is valid and enforceable. Respondent filed a response arguing principally that the prenuptial agreement is unenforceable because petitioner failed to make an adequate disclosure of his assets as was required by the agreement and by

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California law. Some discovery was taken, and the parties proceeded to an evidentiary hearing on the issue of the enforceability of the prenuptial agreement.

¶ 7 At the evidentiary hearing, petitioner testified that indeed some items were not included on his disclosure of assets. Missing, according to him, were disclosures of his personal effects, a rollover IRA from a previous job, an interest in a 1992 family trust, and the two trust accounts mentioned above that were formed in anticipation of the parties' marriage. Petitioner testified that the omission of the IRA account was an inadvertent error and that the parties discussed its existence when they met with petitioner's accountant. He testified that his interest in the family trust was not and still is not an asset because his father is still alive and the trust property does not transfer to him until his father dies. He also testified that he did not separately disclose the trusts formed in anticipation of the marriage because the parties had joint interests in them, the trusts were jointly formed, and because the trusts were referenced elsewhere in the agreement.

¶ 8 During cross examination and during redirect, petitioner was questioned about omitting his interest in other retirement accounts, other trust accounts, and other assets that respondent contends were not disclosed. Respondent also testified. But, for purposes of this appeal, her testimony is scantily relevant. However, she did contradict some of petitioner's testimony regarding discussions and meetings they had leading up to executing the prenuptial agreement. She also testified that she was not aware of the existence of the undisclosed assets prior to executing the agreement.

¶ 9 The trial court issued a 15-page written ruling. In its order, the court found that petitioner failed to disclose 10 separate assets: (1) personal effects; (2) various IRA accounts; (3) the 1998 Wanger Family Revocable Trust; (4) the 1995 Ralph Wanger Life Insurance Trust; (5) the Ralph

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Wanger Family Trust for the benefit of [petitioner]; (6) his retirement interest from Interactive Simulations, Inc.; (7) a Bear Stearns account; (8) the Ralph Wanger, Jr. Grantor TA trust; (9) an undisclosed partnership interest; and (10) annual cash gifts from his family. The trial court indicated that there was evidence to suggest that there may be other undisclosed assets as well. The trial court found that petitioner's testimony regarding his assets was "incongruous, and at best, not credible." The trial court expressed its finding that respondent was not provided with adequate knowledge of petitioner's assets and, therefore, concluded that it would be unconscionable to enforce the spousal support provision limiting the amount of support available to respondent. The trial court indicated that enforcement of the provision would be "manifestly unconscionable" from the view of "the time of execution and at present."

¶ 10 Ultimately, the trial court invalidated the agreement entirely. It later entered a finding pursuant to Illinois Supreme Court Rule 304(a) indicating that there was no just cause for delaying enforcement or appeal of its order. Petitioner filed a notice of appeal. He now asks us to reverse the trial court's ruling and hold that the prenuptial agreement is valid and enforceable.

¶ 11 ANALYSIS

¶ 12 Under California law, a premarital agreement is not enforceable if the party against whom enforcement is sought proves that the agreement was unconscionable when it was executed. Cal. Fam. Code § 1615(a). To prove unconscionability, the party asserting the argument must prove that the following applied to her before the agreement was executed: (1) that she was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; (2) that she did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and (3) that she did not

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have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party. Cal. Fam. Code § 1615(a)(2)(A-C). The agreement is governed by a pre-amendment version of the Code. See 1992 Cal. Legis. Serv. Ch. 162 (A.B. 2650).

¶ 13 Under the California Family Code, the issue of the unconscionability of a premarital agreement is to be decided by the court as a matter of law. Cal. Fam. Code § 1615(b).

Accordingly, a trial court's determination that premarital agreement's spousal support waiver was unconscionable is reviewed *de novo*. *In re Marriage of Howell*, 126 Cal. Rptr. 3d 539, 552 (2011). However, where, as here, the trial court weighs evidence and makes findings of fact, we consider the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving conflicts in support of the judgment. *Id.* at 552. This standard of review is referred to as the "substantial evidence standard," and, under it, so long as there is substantial evidence, the appellate court must affirm even if the reviewing justices personally would have ruled differently had they presided over the proceedings below. *Rupf v. Yan*, 102 Cal. Rptr. 2d 157, 170 n. 5 (2000).

¶ 14 As petitioner acknowledges, one California case looked to the time the agreement was to be enforced rather than the time it was executed to determine whether enforcement of the agreement would be unconscionable. *In re Marriage of Facter*, 152 Cal. Rptr. 3d 79, 93 (2013). Here, the trial court had not made a determination on that issue by the time of the evidentiary hearing so it heard evidence regarding the parties' standing at the time of execution and at the time enforcement was sought. In its order, the trial court indicated that it "acknowledges that it must consider the validity of the agreement at the time of its execution." We understand petitioner's argument about *Facter* and its conflict with the language of the statute, but the trial court properly

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analyzed the evidence to determine if the agreement was unconscionable when it was executed. The trial court looked to post-agreement evidence to aid in its examination of pre-agreement evidence and there is nothing improper about that.

¶ 15 The trial court did make note of the length of the parties' marriage and it acknowledged that enforcement of the agreement would result in respondent receiving just \$1,302.08 per month for the period they were married. To follow that point, the trial court indicated that the result would be unconscionable both at the time of execution and the present. But it is clear that the court's focus was on the conditions existing at the time of execution and its ultimate conclusion was based on the disclosures made prior to the marriage. While we need not base our decision on the analysis used in *Facter*, we do note that, if applied, it would strongly favor a finding of unconscionability. Focusing on whether the agreement was unconscionable at the time of execution, we must decide whether respondent satisfied the three requirements for unconscionability under section 1615(a)(2) of the California Family Code.

¶ 16 The first thing respondent was required to prove was that she was not provided a fair and reasonable disclosure of the property or financial obligations of the other party. Cal. Fam. Code § 1615(a)(2)(A). The trial court heard the testimony and made a finding of fact that ten specific assets were not disclosed at the time the prenuptial agreement was executed. Petitioner's testimony reveals that several financial interests were not disclosed and he admitted as much. Some of the assets not disclosed in the agreement were included on that same year's tax return. Petitioner, during their 16 years of marriage, never sought to amend his disclosures. While petitioner attempted to explain why some of the assets were not disclosed, the trial court noted that his explanation was "at best, not credible."

¶ 17 Petitioner also argues that he had no obligation to disclose his trust interests because they are not assets, but just beneficial interests. But two of the trusts, which hold significant value, are irrevocable trusts. So petitioner's interest in those assets is not speculative. Without considering the trusts, retirement accounts, and the other undisclosed financials, it was impossible for respondent to get even close to an accurate view of petitioner's actual financial standing. A simple oversight would not justify a finding that the disclosure was not fair and reasonable. But the statute does not require the omissions to be intentional, it simply places a burden on a person seeking to enforce a prenuptial agreement to adequately disclose his assets. When the omissions are viewed together, being that we are to consider the evidence in the light most favorable to respondent, giving it the benefit of every reasonable inference and resolving conflicts in support of the trial court's judgment, we cannot say the trial court erred in finding that the disclosure was not fair and reasonable.

¶ 18 The second thing respondent was required to prove was that she did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided. Cal. Fam. Code § 1615(a)(2)(B). Petitioner points to a sentence in the agreement that reads, "No further financial disclosures are required of either party for this Agreement to be placed into effect." Petitioner claims that this constitutes a waiver by respondent to any financial disclosure of which she now complains. But that clause assumes that the disclosures made at the outset were fair. The trial court found they were not. The provision applies to "further" disclosure after petitioner had provided sufficient disclosure to inform respondent of the nature and value of his assets. Respondent did not waive her right to a fair disclosure in the first place. Accordingly, the trial court did not err in finding respondent to

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have not waived her right to disclosure of the omitted assets.

¶ 19 The third thing respondent was required to prove was that she did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party. Cal. Fam. Code § 1615(a)(2)(C). Petitioner argues that all of the assets complained of were readily discoverable so that respondent has no basis to object to their nondisclosure. The trial court heard the testimony on this issue and made its finding of fact, finding there to be "no ability on the part of [respondent] to secure information of [the assets] when she never knew of their existence before executing the agreement." Petitioner attempts to place the burden on respondent and argue that she should have been more diligent. There is no specific evidence that respondent knew of the existence of the assets and there is nothing in the record demonstrating any apparent way in which respondent could have come to know about these assets—most of which are discrete, being trust accounts and retirement accounts. Respondent testified that she did not know of the existence of the undisclosed assets. The trial court resolved the question of fact in respondent's favor and there is substantial evidence to support it. Accordingly, all three requirements are satisfied and the trial court did not err in finding the spousal support provision to be unconscionable and thereby holding that it could not be enforced against respondent.

¶ 20 Respondent points to various deficiencies in the form of petitioner's brief and suggests we should have dismissed the appeal. We have elected to resolve the appeal on the merits, but we would have been justified in dismissing it for a failure to comply with the Supreme Court Rules governing the content and form of appellate briefs. Petitioner's opening brief is unnecessarily long and contains multiple pages of single spaced content, with the brief still coming in at 50 pages. Two full pages of single spaced material is not even a quotation, it is standard, albeit

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unpersuasive, argument. The brief also contains repeated failures to provide citations to the record and has other formatting issues as well. Were we to disregard all of the statements that lack record citations or are improperly formatted, petitioner's argument would lose a lot of its substance. Nonetheless, on the merits, we hold that the trial court committed no reversible error.

¶ 21

CONCLUSION

¶ 22 Based on the foregoing, we affirm.

¶ 23 Affirmed.