2018 IL App (4th) 170368-U

NO. 4-17-0368

FILED
April 16, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF RAQUEL CASTRO GOEBEL,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
and	)	Champaign County
JAMES W. GOEBEL,	)	No. 15D216
Respondent-Appellant.	)	
	)	Honorable
	)	Randall B. Rosenbaum,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 (1) Respondent has forfeited the issue of whether petitioner made a judicial admission that a prenuptial agreement never was signed because he never clearly raised the issue in the trial court—and, forfeiture aside, petitioner never made such an admission.

(2) By admitting the prenuptial agreement in evidence, the trial court did not abuse its discretion; arguably, respondent's own testimony authenticated the document.

(3) Absent proof that the United States is a contracting party to the Hague Convention of March 14, 1978, on the Law Applicable to Matrimonial Property Regimes, the Convention is irrelevant to this case.

(4) Because respondent, as the appellant, has provided this court with transcripts of only the first two days of a three-day bench trial, we presume the totality of the evidence justifies the trial court's rejection of his claims that (a) the prenuptial agreement was unconscionable; (b) he entered into it through a unilateral mistake on his part; and (c) petitioner tricked, pressured, or coerced him into signing the agreement.

¶ 2 Petitioner, Raquel Castro Goebel, petitioned for the dissolution of her marriage to respondent, James W. Goebel. Before the entry of the judgment of dissolution, she also filed, in

same case, an amended complaint for a declaratory judgment, seeking a declaration that a prenuptial agreement between the parties was valid and enforceable. After hearing evidence, the trial court entered a declaratory judgment to that effect. James appeals.

¶ 3 For four reasons, James urges us to reverse the declaratory judgment.

¶ 4 First, he argues that Raquel judicially admitted that the prenuptial agreement never was signed. We conclude that James has forfeited this issue by failing to clearly raise it in the proceedings below—and, in any event, we find his theory of a judicial admission to be unconvincing.

¶ 5 Second, James argues that Illinois Rules of Evidence 901 and 902(3) (eff. Jan. 1, 2011) were unfulfilled and the trial court therefore abused its discretion by admitting the prenuptial agreement in evidence. We conclude no abuse of discretion occurred. A reasonable person could regard James's own testimony as sufficient, under Illinois Rule of Evidence 901(a) (eff. Jan. 1, 2011) to authenticate the agreement. The self-authentication of the agreement under Rule 902(3) was unnecessary if extrinsic evidence authenticated it.

¶ 6 Third, James argues the prenuptial agreement was inadmissible because it failed to satisfy the Hague Convention of March 14, 1978, on the Law Applicable to Matrimonial Property Regimes (Convention). However, because he did not prove the United States ever agreed to be bound by Convention, it is irrelevant to this case.

¶ 7 Fourth, James argues the trial court abused its discretion by rejecting his claim that the prenuptial agreement was unconscionable. Actually, because the statute required him to prove the unconscionableness of the agreement (see 750 ILCS 10/7(a) (West 2016)), the correct question on appeal is whether by finding the agreement not to be unconcionable, the court made a finding that was against the manifest weight of the evidence. Because James has provided this

court with transcripts of only the first two days of a three-day trial, we are in no position to evaluate the manifest weight of the evidence. Instead, we will presume the court's decision is justified by the totality of the evidence.

¶ 8 Therefore, we affirm the judgment.

¶ 9 I. BACKGROUND

¶ 10 On February 7, 2003, while in Brazil, the parties married.

¶ 11 On July 1, 2005, a child, James Goebel, was born to them.

¶ 12 On April 22, 2015, Raquel filed her petition to dissolve the marriage.

¶ 13 On April 15, 2016, while the petition was still pending, she filed a verified complaint for a declaratory judgment. In her complaint, she alleged that on January 29, 2003, in Fortaleza, Brazil, the parties "entered into a Prenuptial Agreement of Universal Community Property ***, a copy of which [was] attached [to the complaint] as Exhibit 'A.' "

¶ 14 Exhibit A consisted of four documents. The first document was in Portuguese, and the second document was its English translation. The third document likewise was in Portuguese, and the fourth document was its English translation. Each of the two Portuguese documents had a stamp and a signature above the stamp. According to the translations, these stamps were the seals and signatures of Brazilian notaries public.

¶ 15 The translator of the first document was Gilberto Fábio Egypto da Silva, who identified himself as an authorized public translator living and practicing in Fortaleza. According to this translation, the first document was a marriage certificate. The marriage certificate stated that the parties' marriage was registered in Fortaleza on February 7, 2003, and that "[t]he marriage was performed under the regime of *Community Property*." (Emphasis in original.)

¶ 16 The third document in exhibit A was a "Prenuptial Agreement of Universal Community of Property," according to its translator, Isabel Freitas Peres, who identified herself as a Brazilian attorney. In the prenuptial agreement, a notarial clerk, Vitor Aguiar de Oliveira, stated that on January 29, 2003, in Fortaleza, the parties, after showing their identification documents, signed the agreement in his presence. According to the text of the agreement, which Aguiar de Oliveira proofread to them, the parties "agreed among themselves to adopt the MATRIMONIAL REGIME of UNIVERSAL COMMUNITY of PROPERTY, importing in the communication [*sic*] of all present and future assets of the companions ***, excluding the dispositive [*sic*] of article 1.668 of the Brazilian Civil Code." Although the certified copy of the prenuptial agreement in exhibit A had the signature of the notary public, it did not include the signatures of the parties.

¶ 17 Raquel alleged in her complaint:

> "3. The Agreement provides that the parties have agreed to marry and, using the legal prerogatives of Article 1,640 of the Brazilian Code, sole paragraph, have agreed among themselves to adopt the Matrimonial Regime of Universal Community of Property, importing in the communication [*sic*] of all present and future assets of the companions, assets acquired free of charge as well as goods purchased, including but not limited to, passive debts signed by one of the contracting parties, excluding the dispositive [*sic*] of Article 1,668 of the Brazilian Code.
>
> 4. Chapter IV of the Universal Community Property Regime provides as follows:

[‘]Art. 1667. Under the universal community regime all present and future property of the spouses, as well as their debts, enter the community, with the exceptions provided in the following article.

Art. 1668. The following are excluded from the community:

I. Property donated or inherited with a clause providing that it is not to become community property, and the property subrogated in its place[.’]

5. The parties’ Prenuptial Agreement did not provide a clause that excluded property donated or inherited from becoming marital property to be divided upon divorce.”

¶ 18 James moved to dismiss the complaint for declaratory judgment. His motion, which cited no section of the Code of Civil Procedure, gave three reasons for the proposed dismissal: (1) exhibit A lacked the signature of either party, (2) petitioner had not submitted “certified translated copies of relevant Brazilian law,” and (3) the Convention provided that a prenuptial agreement was valid only if it was signed and dated by the parties.

¶ 19 On October 26, 2016, the trial court granted the motion for dismissal because exhibit A lacked the parties’ signatures. The court, however, gave petitioner leave to replead.

¶ 20 That same day, James filed a “Sixth Motion in Limine To Bar Petitioner’s Use of or Reference to Any Purported Document That Petitioner Claims To Be [a] Prenuptial Agreement Not Attached to Petitioner’s *Complaint for Declaratory Judgment*.” (Emphasis in original.) He made the following argument in his motion:

"2. That Petitioner attaches to her *Complaint for Declaratory Judgment* documents which purport to be the Prenuptial Agreement for which she is seeking declaratory relief.

3. That Petitioner's *Complaint for Declaratory Judgment* names as Exhibit A, and incorporates therein by reference, the documents which purport to be the Prenuptial Agreement for which she is seeking declaratory relief.

4. That Petitioner has not filed an amended Complaint for Declaratory Judgment[,] nor has she sought leave of court to do so.

5. That Petitioner should be barred from now claiming that any other document not attached to her *Complaint for Declaratory Judgment* is the purported prenuptial agreement."

The record does not appear to contain a ruling on this motion *in limine*—perhaps because on November 8, 2016, Raquel filed an amended complaint for declaratory judgment, rendering the motion moot. Attached to the amended complaint was the same prenuptial agreement as before, but this copy included the purported signatures of both parties. There appears to be no dispute that the agreement attached to the amended complaint was identical in its content to the agreement attached to the original complaint.

¶ 21 Pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), James moved to dismiss the amended complaint for declaratory judgment. His only asserted ground for dismissal was that although the present copy of the prenuptial agreement "included what [petitioner] allege[d] to be the signatures of the parties," the amended complaint nevertheless was legally insufficient because the agreement lacked the certification

required by Illinois Rule of Evidence 902(3) (eff. Jan. 1, 2011) (self-authentication of foreign public documents).

¶ 22 On February 16, 2017, the trial court denied the motion to dismiss the amended complaint for declaratory judgment, and the court began hearing evidence on the amended complaint. The evidentiary hearing lasted three days: February 16, 17, and 21, 2017. James, the appellant, has provided this court with transcripts only for February 16 and 17, 2017.

¶ 23 On March 6, 2017, the trial court issued a memorandum opinion on the amended complaint for declaratory judgment. The court made the following finding as to the authenticity of the prenuptial agreement:

> "In the present case, this Court is satisfied, based on the testimony of the parties and [John T.] Karam [(a professor in the Spanish and Portuguese department of the University of Illinois, who provided his own translation of the prenuptial agreement)], that Respondent signed a prenuptial agreement that was recorded in Brazil. Respondent admitted signing a document, Petitioner saw him sign it and recognizes his signature[,] and there was sufficient testimony that the document was filed with Brazilian authorities. There was extensive testimony that the original, signed document, remains with the Brazilian authorities and that stamped copies are provided, on request, but do not contain the signature page. This Court does have concerns whether [petitioner's exhibit No. 1] is a copy of the actual document filed with the Brazilian authorities since Petitioner herself testified that she could not get a copy of the signed document. Respondent argues that, even if he signed such a document, [petitioner's exhibit No. 1] contains his signature cut and pasted from some other document. There is support for such a

claim. Nonetheless, [petitioner's exhibit No. 2] is a certification from Brazilian authorities that the original document (as depicted by [petitioner's exhibit No. 1]), was in fact signed, executed[,] and maintained at a government office. Therefore, this Court finds that the exhibits are copies of the prenuptial agreement that Petitioner claims them to be."

¶ 24 James had insisted to the trial court that even if the prenuptial agreement was authentic, he had been duped into signing it and that enforcing it against him would therefore be unconscionable. Raquel, on the other hand, denied she ever misled him. The court summarized the positions of the parties as follows:

"Petitioner asserts that she and Respondent spoke about the different marital regimes, she expressed her desire to have the universal community regime, that the parties went to the notary[,] who read the documents, there was no objection by Respondent[,] and he signed it. Petitioner further asserts the document is legally binding and Respondent was fluent enough in Portuguese to understand it. Even if he did not, she believes he had the opportunity to ask questions at the time of signing or he could have sought advice from lawyers or others. Respondent asserts that he was not fluent in Portuguese in 2003, the parties had not discussed their financial situations, there was discussion about the three marital regimes but no discussion about inheritance. He further asserts that he had elected the middle regime similar to Illinois law and he thought that the document he signed in front of the notary was the marriage license and not the prenuptial agreement."

¶ 25 After considering these competing accounts and weighing the credibility of the witnesses, the trial court, all in all, "[found] Petitioner to be more credible than Respondent."

The court also found no merit in James' affirmative defenses of fraud, duress, coercion, and unconscionableness. The court explained, as follows:

> "Respondent was in Brazil, wanting to stay there after marriage. He was learning Portuguese and, although he did not know it fluently, knew enough to understand the basics. Although not required, he could have asked the notary to translate it into English and could have not signed it that date if he did not understand it or had questions. Respondent knew about the property regimes and, although he claims he chose a different one than Petitioner, reasonably knew he had to elect prior to the wedding. [Petitioner exhibit Nos.] 1 and 2 are copies of the prenuptial agreement that he signed a week or so before the civil wedding."

¶ 26 Therefore, the trial court held the prenuptial agreement to be valid and enforceable and that, pursuant to the agreement, any property brought into the marriage or acquired during the marriage was marital property. In the original version of its declaratory judgment, though, the court made one exception to that holding: the court interpreted the agreement as excluding inheritances. Accordingly, the court further held that "[a]ny property donated or inherited [was] excluded from the marital estate if the party seeking its exclusion prove[d] such a donation or inheritance by clear and convincing evidence."

¶ 27 Finally, the trial court made a finding under Illinois Supreme Court Rule 304(a) (eff. March 8, 2016) that there was no just reason for delaying enforcement or appeal.

¶ 28 On March 14, 2017, Raquel filed a posttrial motion, in which she argued it was premature to hold that all inherited property was excluded from the community-property regime. The prenuptial agreement, by its terms, excluded " 'the dispositive [*sic*] of article 1,668 of the Brazilian Civil Code.' " Under article 1668, petitioner pointed out, inherited property was not,

per se, excluded from the community-property regime. (She attached to her posttrial motion a published English translation of article 1668 (Julio Romañach, Jr., Civil Code of Brazil 304 (2014 ed.).) More precisely, section 1668 "excluded from the community" "[p]roperty donated or inherited with a clause providing that it [was] not to become community property, and the property subrogated in its place." *Id.* In other words, she seemed to argue, article 1668 of the Brazilian Civil Code—and, hence, the prenuptial agreement—excluded inherited property from the community only if the donative instrument expressly stipulated that the property was not to become community property. Therefore, Raquel requested the court to eliminate from its declaratory judgment the holding that "[a]ny property donated or inherited [was] excluded from the marital estate if the party seeking its exclusion prove[d] such a donation or inheritance by clear and convincing evidence."

¶ 29 In the docket entry for April 13, 2017, the trial court granted Raquel's posttrial motion. The docket entry "modified" the declaratory judgment so that it merely "reflect[ed] that the pre-marital agreement [was] valid and enforceable."

¶ 30 On May 11, 2017, James filed his notice of appeal.

¶ 31 II. ANALYSIS

¶ 32 A. The Purported Judicial Admission

¶ 33 James argues that because the original verified complaint for declaratory judgment had attached to it, as exhibit A, an unsigned copy of the prenuptial agreement and because the complaint referred to exhibit A as "a copy of" the agreement the parties "entered into," the doctrine of judicial admissions bars petitioner from disputing that the agreement never was signed. James quotes from (among other authorities) *North Shore Community Bank & Trust Co. v. Sheffield Wellington, LLC*, 2014 IL App (1st) 123784, ¶ 102, in which the appellate court

held: "[A]ny admissions [in a verified pleading that are] not the product of mistake or inadvertence become binding judicial admissions." (Internal quotation marks omitted.)

¶ 34 Raquel counters that James has forfeited the issue of whether she made a judicial admission because James never raised the issue in the trial court. Raquel cites (among other authorities) *Dowell v. Bitner*, 273 Ill. App. 3d 681, 692 (1995), in which the appellate court held that the failure to raise an issue in the trial court resulted in the forfeiture of the issue on appeal.

¶ 35 In his reply brief, James insists that he did raise the issue in the trial court. He cites two instances when, supposedly, he raised the issue of a judicial admission.

¶ 36 First, in his sixth motion *in limine*, respondent requested the trial court to bar petitioner from "claiming that any other document not attached to her *Complaint for Declaratory Judgment* [was] the purported prenuptial agreement." (Emphasis in original.) Actually, that request had nothing to do with the presence or absence of signatures. One can refer to a signed copy of a document or to an unsigned copy of it. In either case, it is the same document. Signing a document does not change it into a different document.

¶ 37 Second, in James' motion to dismiss the amended complaint for a declaratory judgment, he observed that "the Prenuptial Agreement attached to Petitioner's *Complaint for Declaratory Judgment* as filed on April 29, 2016, [was] not signed by either party." (Emphasis in original.) Respondent did not thereby raise the question of whether petitioner had judicially admitted the absence of signatures. Rather, by further observing in his motion, that "[p]etitioner ha[d] not filed an amended Complaint for Declaratory Judgment" and had not "sought leave of court to do so," he implied that the asserted pleading defect was potentially correctable by an amendment.

¶ 38 So, it appears that, in the proceedings below, James never claimed a judicial admission by petitioner that the prenuptial agreement was unsigned by the parties. Consequently, we are unconvinced by his efforts to avoid a forfeiture.

¶ 39 Assuming, for the sake of argument, that respondent has not forfeited his claim that petitioner made a judicial admission, the claim is untenable. To qualify as a judicial admission, the admission must be clear. *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). Far from being clear, the purported judicial admission in this case is strained or manufactured.

¶ 40 Instead of clearly admitting that the parties never signed the prenuptial agreement, Raquel effectively pleaded the parties had signed it. Her original complaint for declaratory judgment "incorporated" exhibit A "by reference," and exhibit A included the certification by a Brazilian notary public that the parties "accepted and signed" the agreement on January 29, 2003. "Any document attached to the pleading will be treated as part of the pleading if the pleading specifically incorporates it by reference." *Garrison v. Choh*, 308 Ill. App. 3d 48, 53 (1999).

¶ 41 B. The Admission of the Prenuptial Agreement in Evidence

¶ 42 James also argues that Illinois Rules of Evidence 901 and 902(3) (eff. Jan. 1, 2011) were unfulfilled and the trial court therefore abused its discretion by admitting the prenuptial agreement in evidence.

¶ 43 As James acknowledges, the decision to admit or exclude evidence lies within the sound discretion of the trial court, and we will overturn such evidentiary rulings only if we find an abuse of discretion. See *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 456 (2009). A trial court abuses its discretion only if no reasonable person would take the trial court's view. *Id.*

¶ 44 The question, then, with respect to Illinois Rule of Evidence 901(a) (eff. Jan. 1, 2011), is whether a reasonable person could perceive, in the record, "evidence sufficient to support a finding that the matter in question is what its proponent claims," *i.e.*, that Raquel's exhibit Nos. 1 and 2 are, in fact, a prenuptial agreement the parties entered into. Ill. R. Evid. 901(a) (eff. Jan. 1, 2011). (The two exhibits are identical in content, but Raquel's exhibit No. 1 is the document that includes the parties' signatures, whereas her exhibit No. 2 is the notarized copy, without the parties' signatures, that the local government in Brazil provided.) A reasonable person could find sufficient evidence in the following testimony by James. On cross-examination, Raquel's attorney asked him the following questions:

> "Q. Okay. The document that you signed that was attached as Petitioner's Exhibit Number 1, I think you testified you recognized the signature on that. You remember signing that document, correct?
>
> A. Yeah.
>
> Q. Okay. That is dated January 29, 2003, correct?
>
> A. Okay.
>
> Q. Is that correct?
>
> A. Yeah. I see it.
>
> Q. Okay. You actually signed this document a little over a week before you went and signed the marriage license at the civil ceremony, correct?
>
> A. Yeah. It was at the same place."

¶ 45 Given these admissions that James made under oath on February 17, 2017, a reasonable person could regard the self-authenticating provisions of Illinois Rule of Evidence 902(3) (eff. Jan. 1, 2011) as superfluous. Arguably, James' repeated admission that he signed the

prenuptial agreement was sufficient extrinsic evidence of its authenticity. See Ill. R. Evid. 901(a) (eff. Jan. 1, 2011). Consequently, whether the document also could be regarded as self-authenticating under Rule 902(3), given its Brazilian notarization, was not an essential question.

¶ 46 C. The Convention

¶ 47 James argues that because petitioner failed to show compliance with the Convention, the trial court abused its discretion by admitting the prenuptial agreement in evidence. He represents that both Brazil and the United States are "members" of the Convention. In support of that representation, he cites some pages of the common-law record. The cited pages appear to have been printed from the Web site of the Hague Conference on Private International Law (Conference), an intergovernmental organization. James seems to take it for granted that we may take judicial notice of information from the web site. He does not explain our authority for doing so.

¶ 48 Assuming, for the sake of argument, that we may take judicial notice of information from the Conference's Web site, the printouts really do not establish that the United States is a contracting party to the *Convention*. Instead, they establish that the United States is a member of the *Conference*. There is a difference. According to the Conference's Web site, only three countries are parties to the Convention: France, Luxembourg, and the Netherlands. https://www.hcch.net/en/instruments/conventions/status-table/?cid=87. Members of the Conference are not necessarily parties to the Convention. Until James establishes, by citation to legal authority, that the Convention has the force of law in the United States, we are unclear how the Convention is relevant to this case.

¶ 49 D. The Purported Unconscionableness of the Prenuptial Agreement

¶ 50 James claims that the prenuptial agreement is unenforceable because it "does not comply with the requirements of [section 7(a) of] the Illinois Uniform Premarital Agreement Act" (750 ILCS 10/7(a) (West 2016)). James was required to prove the agreement failed to comply with section 7(a). That section provides as follows:

> "§ 7. Enforcement. (a) A premarital agreement is not enforceable *if the party against whom enforcement is sought proves* that:
>
> (1) that party did not execute the agreement voluntarily; or
>
> (2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:
>
> (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
>
> (ii) 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
>
> (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party." (Emphasis added.) 750 ILCS 10/7(a) (West 2016).

Thus, as to the issue of unconscionableness, section 7(a) placed the burden of proof on James. See *id.* He had to prove the prenuptial agreement was unconscionable. Raquel did not have the burden of proving it was conscionable.

¶ 51 After the presentation of evidence, the trial court found that James had failed to carry his burden of proof. To decide whether that finding is against the manifest weight of the evidence (see *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 484 (2002)), we need a

complete record of the evidence that was presented. As the attorney for James admitted during oral arguments, James has provided this court the transcripts of only the first two days of a three-day trial. On the omitted third day of the trial, the cross-examination of James was resumed, and if Raquel presented any rebuttal evidence, she would have done so on that day. Material evidence could have been presented regarding James' claim of unconscionableness.

¶ 52 Also, during the omitted third day of the trial, material evidence could have been presented regarding James' claims that (1) his execution of the prenuptial agreement was a unilateral mistake on his part and (2) Raquel defrauded him by misrepresenting to him that the prenuptial agreement was a marriage license.

¶ 53 As the appellant in this case, James must "present the court with a proper record on appeal, so that the court has an adequate basis for reviewing the decision below." *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). This court cannot reasonably assess the manifest weight of the evidence unless we have all the evidence. The evidentiary record in this case is significantly incomplete. Accordingly, we conclude that the presumption of regularity is unrebutted, and we reject James' challenges to the sufficiency of the evidence. See *People v. Hillis*, 2016 IL App (4th) 150703, ¶ 106.

¶ 54 III. CONCLUSION

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

¶ 56 Affirmed.