2011 IL App (1st) 102789-U

FIRST DIVISION
November 14, 2011

No. 1-10-2789

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
PATRICIA O'MERA,	)	Cook County
	)	
Petitioner-Appellant,	)	
	)	No. 06 D 009074
v.	)	
	)	
JOSEPH O'MERA,	)	Honorable
	)	Dominique Ross,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Justices Hoffman and Rochford concurred in the judgment.

ORDER

¶ *1* *HELD:* The circuit court's order granting respondent's motion for a directed finding on petitioner's motion to vacate or modify the judgment for dissolution of the parties' marriage was not against the manifest weight of the evidence. There was no clear error in court's finding that the parties' marital settlement agreement was not unconscionable and petitioner failed to present a *prima facie* case for rescission or vacation and modification of the agreement.

¶ 2 Petitioner Patricia O'Mera appeals from an order of the circuit court granting respondent Joseph O'Mera's motion for a directed finding on Patricia's motion to vacate

or modify the judgment for dissolution of the parties' marriage. Patricia had asserted that errors in the marital settlement agreement incorporated into the dissolution judgment warranted vacation or modification of the judgment. She argues the court's finding in favor of Joseph was against the manifest weight of the evidence because she presented a *prima facie* case that (1) there was a material mistake in the agreement warranting its rescission and (2) the agreement was unconscionable as a whole and thus should be vacated pursuant to section 502(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/502(b) (West 2008)) (Marriage Act).[1] We affirm.

¶ 3 Background

¶ 4 Patricia and Joseph were married in 2000 and had two children during the marriage. In 2006, Patricia filed a petition for dissolution of marriage. In October 2008, the circuit court entered the parties' parenting agreement, awarding the parties joint custody of the children and setting the amount of child support Joseph would pay

[1] As her "Issues Presented for Review," Patricia presents the following questions: (1) whether the court erred in granting Joseph's motion for a directed finding after finding Patricia had presented a *prima facie* case and had put on a "very good argument"; (2) whether the court's determination that there was no mutual mistake of fact was against the manifest weight of the evidence; (3) whether the court's failure to consider whether there was a unilateral mistake of fact was against the manifest weight of the evidence; and (4) whether the court's determination that the marital settlement agreement, as a whole, was not unconscionable was against the manifest weight of the evidence. However, Patricia's argument section does not present these four issues as separate arguments. Instead, she presents two arguments, essentially as we have stated them above, and "Issues" 1, 2 and 3 are subparts of the first argument. For clarity, we follow the format of her argument rather than the outline in her "Issues" section.

Patricia. On May 19, 2009, the court entered a judgment dissolving the parties' marriage. The judgment incorporated a marital settlement agreement signed by both parties. In the agreement, the parties apportioned their assets and liabilities and Patricia waived her right to maintenance.

¶ 5 On June 18, 2009, Patricia filed a motion to vacate or otherwise modify the judgment of dissolution because the marital settlement agreement was (1) unconscionable and (2) the result of mutual mistake. Patricia asserted the agreement was unconscionable because she was pressured by her attorneys into signing the agreement without full knowledge of what it meant and the parties' financial circumstances resulting from the agreement were disproportionally one-sided in Joseph's favor. She argued the agreement overvalued her business and car, undervalued the parties' Chicago bears tickets, placed the entire 2007 income tax burden on her and improperly divided her pre-marital retirement accounts with Joseph. She asserted the unconscionable agreement should be vacated pursuant to section 502(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/502(b) (West 2008)).

¶ 6 Patricia asserted there was a mutual mistake in drafting the agreement because the agreement failed to distinguish between marital and non-marital assets and, instead divided all investment and pension assets equally. She had understood the division of assets would exclude all non-marital assets and investments, specifically that each party would keep their non-marital retirement assets. Instead, the agreement awarded

Joseph a 50% share of her non-marital assets, allegedly valued at approximately $89,000. Patricia argued that this was not the agreement of the parties and the agreement should be rescinded on the basis of this mistake. She asserted rescission was warranted because the mistake was material, was of such consequence as to make enforcement of the agreement unconscionable and occurred despite her due care and because rescission of the agreement would return the parties to the status quo.

¶ 7 The court held a multi-day hearing on the motion to vacate, during which the parties and their attorneys testified. At the close of Patricia's case, Joseph filed a motion for a directed finding pursuant to section 2-1110 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1110 (West 2008)). The court granted Joseph's motion on August 23, 2010. Patricia timely appealed the court's order on September 20, 2010.

¶ 8 Analysis

¶ 9 Standard of Review

¶ 10 Patricia argues the court erred in granting Joseph's section 2-1110 motion for a directed finding on her motion to vacate or modify the dissolution judgment. Pursuant to section 2-1110, at the close of the plaintiff's case in chief in a bench trial, the defendant may, as Joseph did here, move for a directed finding in his or her favor. 735 ILCS 5/2-1110 (West 2008)); *Baker v. Jewel Food Stores, Inc.,* 355 Ill. App. 3d 62, 66 (2005); *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). In ruling on a section 2-1110 motion, the court must perform a two-prong analysis. *Baker,* 355 Ill. App. 3d at 66. First, the court must determine, as a matter of law, whether the plaintiff has

presented a *prima facie* case, *i.e.*, presented "at least 'some evidence on every element essential to [the plaintiff's underlying] cause of action.' " *Baker,* 355 Ill. App. 3d at 66 (quoting *People ex rel. Sherman*, 203 Ill. 2d at 275, quoting *Kokinis v. Kotrich,* 81 Ill. 2d 151, 154 (1980)). If the court finds the plaintiff did not present a *prima facie* case, the court must grant the motion for a directed finding and enter judgment in the defendant's favor, dismissing the action. 735 ILCS 5/2-1110 (West 2008); *Baker,* 355 Ill. App. 3d at 66. We review *de novo* the court's determination that a plaintiff failed to present a *prima facie* case as a matter of law. *Baker,* 355 Ill. App. 3d at 66.

¶ 11 If the court determines that the plaintiff did present a *prima facie* case, it then moves to the second prong of the analysis under which the court, as the finder of fact, must consider the totality of the evidence presented, including any evidence that is favorable to the defendant. *Baker,* 355 Ill. App. 3d at 66. The court is to determine, after weighing the quality of the evidence and applying the standard of proof required for the underlying cause, whether “sufficient evidence remains to establish the plaintiff's *prima facie* case.” *Baker,* 355 Ill. App. 3d at 66-67 (quoting *People ex rel. Sherman*, 203 Ill. 2d at 276). This weighing process involves consideration of evidence presented by both the plaintiff and the defendant and may, therefore, " ‘result in the negation of some of the evidence presented by the plaintiff.’ " *Baker,* 355 Ill. App. 3d at 66 (quoting *People ex rel. Sherman*, 203 Ill. 2d at 276). If the court finds the remaining evidence does not establish the plaintiff’s *prima facie* case, it must grant the defendant's motion and dismiss the action. *Baker,* 355 Ill. App. 3d at 67. We will not reverse such a ruling

unless it is contrary to the manifest weight of the evidence. *Baker,* 355 Ill. App. 3d at 66-67.

¶ 12 The court here decided the motion for a directed verdict after weighing the evidence under the second prong of the analysis. During the hearing on Joseph's motion for a directed finding on Patricia's assertions of unconscionability and of mutual mistake, the court stated "while [Patricia put] on a very good argument and [presented] a *prima facie* case, after considering the evidence and weighing the evidence that was presented to the Court, the Court is going to grant the motion for a directed finding." It then explained the basis for its decision. Because the basis for the court's decision is relevant to the determination of which prong the court used to decide Joseph's motion, and to our subsequent analysis of whether the court was correct in its decision, we will outline its decision in detail.

¶ 13 The court first stated that, looking at the judgment in a vacuum and picking it apart, some of the issues or property divisions were not "exactly equal or perhaps something was not understood, but the main issue is that I was the trial judge at the time that this judgment was entered and I remember very clearly what was taking place at the time." The court remembered "there were a series of pretrial conferences throughout the entire day, and there would be a recommendation, it would go back to the parties, the parties would come back and there would be an agreement. And this took place throughout the course of the day, because we were set for trial." Looking at "those factors," the court stated it did not find Patricia's argument that she was coerced

"to be a very compelling argument."[2]

¶ 14 The court stated that the agreement with respect to the accounts held by the parties was modified by handwritten notes and "gone over back and forth." The court noted that it was "the result of negotiations throughout the entire day. It was not as if the parties walked in, ***, okay, this is what the agreement is going to be, you have a couple of minutes to sign it." Instead, the court remembered that the reason the prove-up did not commence until almost 4:00 p.m. that day was "because the parties had gone back to their respective attorneys's offices and gone over the agreement with what the court considered to be as much of a fine-tooth comb. And there were continued negotiations, not only from the day the trial had begun, but before trial had begun."

¶ 15 With regard to unconscionability of the agreement, the court stated that it knew from the pretrial conferences that "all of the accounts were going to be divided." It noted that the reason there was "no specific mention" in the agreement regarding division of marital versus non-marital assets, "was because the entire time it was all of the accounts were going to be divided. And if it wasn't exactly 50/50, it was pretty close." It did not consider that "the disparity of being perhaps [45/55] is enough to make this agreement unconscionable.

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[2] The terms of an agreement will not be enforced if procured by coercion. *In re Estate of Braun*, 222 Ill .App. 3d 178, 184 (1991). Although the circuit court examined whether Patricia was coerced into signing the agreement, coercion is not an issue here. Patricia states she is not claiming that the judgment should be vacated because she was coerced into signing it but rather that she is setting forth the circumstances surrounding its signing and the prove-up - the behavior of her attorneys toward her - as evidence to support the first prong of the unconscionability analysis.

¶ 16 Looking to mutual mistake, the court held Patricia's argument failed because if there was a mutual mistake, Joseph would have had the same understanding as Patricia that Patricia's non-marital accounts were not to be divided and the court's notes showed Joseph knew that "all the accounts were going to be divided." The court noted that

> "there was so much going on with these parties' accounts, money coming in, money going out, there were issues of dissipation that were dropped, there [were] so many different things that at some point everything was thrown in and divided. *** And that was the court's understanding, from the moment that the parties entered into the first pretrial conference, even with respect to the Bears tickets, *** or the value of [Patricia's] business. It *** may appear after the fact that there was just some *** willy-nilly basis for coming up with those numbers, but truly it was a situation where there was a value placed on *** the tickets and the business."

The court could not specifically recall the value but did recall it was discussed by the parties and "the parties were satisfied."

¶ 17 The court closed with the observation that, "based upon all the negotiations that were entered into," it was "not convinced" the parties agreement was unconscionable. It stated

> "[Patricia] at that time raised questions, she was not timid, she was not at all seemingly as if her arm was being twisted. She was very verbal about certain

issues with respect to the judgment, and the court had the opportunity to observe that behavior at the time we were set for trial. And for those reasons, the Court is going to grant the motion for a directed verdict."

¶ 18 The court's explanation of its decision shows that it found Patricia initially presented a *prima facie* case, thus satisfying the first prong of the analysis. Then, after weighing all the evidence under the second prong, it found the evidence insufficient to support a *prima facie* case and, therefore, granted Joseph's motion for a directed finding. Because the court granted the motion for a directed finding under the second prong of the analysis, we will not reverse its decision unless it is contrary to the manifest weight of the evidence, *i.e.*, unless it contains an error that is clearly evident, plain, and indisputable. *Baker,* 355 Ill. App. 3d at 66-67; *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 623 (2006).

¶ 19 Unconscionability of the Marital Settlement Agreement

¶ 20 Patricia asserts the court erred in granting the directed finding because she established a *prima facie* case for both her claims for relief. Her first claim, and her first argument on appeal, is that the agreement should be rescinded because of a mutual or unilateral mistake in its drafting, rendering it unconscionable. The mistake she urges is that she understood the parties' non-marital accounts, specifically her $89,000 retirement account, was to remain hers and was not to be divided equally with Joseph. The marital settlement agreement does not differentiate marital from non-marital accounts and, therefore, divides this asset equally between the parties. She asserts the

mistake was mutual because Joseph allegedly confirmed that he understood the same but that, even if it was unilateral, the parties' different understanding of the agreement warrants granting her motion to vacate.

¶ 21 Patricia's second claim/argument is that the agreement is unconscionable as a whole because of the circumstances under which it came to be signed and the economic circumstances resulting from the agreement and that it should be vacated pursuant to section 502(b) of the Marriage Act. Patricia asserts she was pressured by her attorneys into signing the agreement without any real understanding of how some of the key issues were determined. She asserts her attorneys misled her regarding the division of non-marital assets, insulted and ignored her, did not respond to her questions or concerns, rebuffed her without explanation, rushed her and told her she had no choice but to sign the agreement. She also asserts the agreement improperly divided her non-marital assets; contained valuations of her car, her business and the parties' Chicago bears tickets that were far askew of reality; attributed her with far greater income than she was anticipating; required her to waive maintenance on the basis of that overvalued income; improperly treated her income during the separation as a marital asset; improperly required her to pay the entirety of the tax burden on her income, even though that income was to be divided with Joe. She asserts the agreement is skewed and one-sided, resulting in a clear economic benefit to Joseph, even though he has a much higher income.

¶ 22 Both Patricia's argument regarding rescission due to mistake and her argument

regarding vacation pursuant to section 502(b) concern the unconscionability of the marital settlement agreement. Rescission is appropriate for either a unilateral or mutual mistake of fact if the party seeking rescission can show by clear and convincing evidence that (1) the mistake is of a material nature; (2) the mistake is of such consequence that enforcement is unconscionable; (3) the mistake occurred notwithstanding the exercise of due care by the party seeking rescission; and (4) rescission can place the other party in status quo. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 519 (1992). Under section 502(b), the terms of the parties' marital settlement agreement are binding on the court except when the court finds the agreement unconscionable, in which case the agreement can be vacated and modified. *Blum v. Koster*, 235 Ill.2d 21, 30 (2009). There can be no rescission on the basis of mistake unless the movant shows it would be unconscionable to enforce the agreement. Similarly, there can be no vacation or modification of the agreement under section 502(b) unless the movant shows the agreement is unconscionable.

¶ 23 The court determined the agreement was not unconscionable and granted the directed finding on that basis. "A marital settlement agreement is unconscionable if there is 'an absence of a meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.' " *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251 (2002) (quoting *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 709 (1996)). "There are two types of unconscionability: (1) procedural unconscionability, which 'involves impropriety during

the process of forming a contract that deprives a party of a meaningful choice;' and (2) substantive unconscionability, which 'relates to situations where a clause or term in a contract is allegedly one-sided or overly harsh.' " *In re Gibson-Terry and Terry*, 325 Ill. App. 3d 317, 326 (2001) (quoting *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1196 (2000)).

¶ 24 To determine whether an agreement is unconscionable, the court must consider two factors: (1) the circumstances and conditions under which the agreement was made; and (2) the economic circumstances of the parties that result from the agreement. *Bielawski*, 328 Ill. App. 3d at 251; *In re Marriage of Foster*, 115 Ill. App. 3d 969, 972 (1983). The court's recitation of its decision shows that it applied the correct standard of law in making its determination that the agreement was unconscionable: it examined both the circumstances under which the agreement came about and the economic circumstances of the parties resulting therefrom.

¶ 25 As the party moving to vacate the agreement, Patricia has the burden of establishing sufficient grounds to vacate. *Agustsson*, 223 Ill. App. 3d at 517. She asserts both the circumstances under which the agreement was made and the economic circumstances resulting from the agreement render the agreement unconscionable. She also asserts that the agreement is unconscionable as a matter of law because it does not reflect the agreement of the parties.

¶ 26 (1) Circumstances under which the Agreement was Made

¶ 27 Patricia argues, as she did below, that the conditions under which the parties

reached the marital settlement agreement were so oppressive that the agreement is unconscionable. Patricia asserts she was rushed to judgment by her attorneys. She asserts she understood and had been told by her attorneys that her pre-marital assets would remain hers but, on the day of the prove up, the agreement stated otherwise. She argues she "was blind sided at the last minute with unexplained values being placed on marital assets and similar shell games that [she] did not understand" and that "when she sought explanations from her own counsel, she was insulted, threatened and ignored." She asserts her two attorneys told her that if she challenged the proposed values of the marital assets she could be faced with even worse results and that "she had no choice but to agree to the document in front of her. All [she] knew was that her own lawyers were turning against her, the judge was waiting for her and she was being required to sign a document that she truly did not understand."

¶ 28 The court did not accept Patricia's characterization of the circumstances leading to the court's approval of the agreement. Its decision is not against the manifest weight of the evidence. Patricia's characterization of those circumstances is belied by the court's own memory of events, which was that the 50/50 split of all assets, both marital and premarital, had been decided pretrial; negotiations regarding the agreement took all day and involved a constant back and forth between the parties and their attorneys; and Patricia was a full and vocal participant during the negotiations.

¶ 29 Patricia's characterization is also belied by her testimony during the prove-up hearing on the agreement. On the stand, she agreed that "all financial accounts" except

savings and checking accounts would be divided equally; the intent of the agreement was "to split everything – all of [the] assets 50/50" and that Joseph would receive $24,749 from the sale of the former marital home to "balance out" the fact that her car had value and she had put more money down than Joseph when each purchased their new homes. She agreed that the agreement has come "through *** over time, and we've negotiated with Joseph and his counsel over time"; there was limited discovery; she and her attorneys had spoken about the agreement and its terms; and her attorneys had advised her that, "in some instances," if she went to trial, they thought she could "do a little better in some areas *** [and] a little worse" in others. She agreed that "knowing all that, [she was] still asking the court to appropriate [her] agreement into the judgment for dissolution of marriage; she had been "satisfied" with her attorneys' representation in the cause; nobody forced or coerced her into the agreement; and no-one promised her anything outside the agreement.

¶ 30 Patricia's characterization of the circumstances is further belied by the testimony of her two attorneys, who variously testified regarding the extensive negotiations about the details of the agreement and Patricia's active participation therein; the court's recommendation that the assets be divided equally in order to put an end to the wrangling regarding assorted peripheral claims; their responsiveness to Patricia's concerns; their mistake in informing Patricia that she would be keeping her pre-marital accounts; their subsequent notification to Patricia that this understanding was a mistake and that all assets, including her pre-marital assets, would be divided equally; and

Patricia's knowledge of what the terms of the agreement were.

¶ 31 On a motion for a directed finding, the court cannot view the evidence in the light most favorable to the plaintiff but, instead, must " ‘weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence’ " and draw reasonable inferences therefrom. *Baker,* 355 Ill. App. 3d at 66, 823 N.E.2d at 99, quoting *People ex rel. Sherman*, 203 Ill. 2d at 276, 786 N.E.2d at 149. Here, the court chose to credit the attorneys' testimony and its own memory of the circumstances over Patricia's version of the circumstances, holding that the circumstances were not unconscionable. We grant that Patricia's attorneys had a vested interest in portraying their representation of her in a positive light. However, we give the court's credibility findings great deference (*Terry*, 325 Ill. App. 3d at 328) and, without more, cannot find the court erred in its credibility determination. The court's holding that the agreement is not unconscionable is supported by the evidence and there is no clearly evident, plain and indisputable error. Although the number of hours spent negotiating is not a " *'per se* formulation of unconscionability,' " significance lies in the fact that the parties negotiated over an extended period at " 'arm's length with the aid of counsel.' " *Terry*, 325 Ill. App. 3d at 327 (quoting *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 710 (1996).

¶ 32 Further, subjective agreement to the terms of a contract is not required; conduct indicating agreement with its terms is sufficient. *In re Marriage of Kloster*, 127 Ill. App. 3d 583, 585 (1984). Even an agreement that is signed quickly and without real understanding because the party's attorney is anxious and wants to get things over

quickly and the party felt under duress has been found to be binding where later conduct affirms it. *Kloster*, 127 Ill. App. 3d at 585. Patricia's conduct after signing the agreement served to affirm the agreement. During the prove-up hearing, she told the court she was not coerced, was happy with her attorneys' representation and agreed to the recitation of the terms of the agreement. Her statements to the court affirming the agreement show she understood and agreed to it. Patricia asserts she lied during the hearing but the court did not credit this assertion and we defer to the court's credibility determination.

¶ 33 The court's determination that the circumstances surrounding the making of the agreement were not unconscionable is not against the manifest weight of the evidence.

¶ 34 (2) Economic Circumstances Resulting from the Agreement

¶ 35 Patricia argues, as she did below, that the economic conditions resulting from the settlement agreement are so one-sided in favor of Joseph as to make the agreement unconscionable. She asserts the agreement improperly overvalued her car and her business, double-counted her earnings, undervalued the parties' Chicago Bears tickets, burdened her with the entire 2007 tax liability on the parties' income, awarded Joseph the difference between the amount each party put down for the purchase of their respective new residences and failed to exclude her pre-marital retirement accounts from the division of property. She asserts the errors result in a $123,500 disparity in the division of assets in Joseph's favor, an economic circumstance that so overwhelmingly favors Joe, who earns significantly more money than Patricia, that the agreement is

one-sided and unconscionable as a result. The court disagreed.

¶ 36 The fact that the agreement is more favorable to Joseph does not mean it is unconscionable. An agreement is not unconscionable merely because it favors one party over another. *Terry*, 325 Ill. App. 3d at 325. " 'To rise to the level of being unconscionable, the settlement must be improvident, totally one-sided or oppressive.' " T*erry*, 325 Ill. App. 3d at 326 (quoting *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 182 (1996)). The agreement here is not so one-sided or oppressive as to render it unconscionable. Granted, there was an unequal distribution of property. However, the difference between the distributions is not so extreme that the agreement is unconscionable and should not be enforced. The agreement provides:

> 1. Each party will receive 50% of the proceeds from the sale of a house they still own and 50% of a 401(k) account and pension, so this distribution is a wash. 2. Patricia will receive 40%, after taxes, of Joseph's 2008 $300,000 incentive grant agreement, of which he had already been paid $200,000 and is owed another $100,000. Joseph will receive 55% of the net and each child would receive 2.5% in a trust account, so Joseph is ahead by $45,000 gross (15% of $300,000 gross) on this distribution.[3]
>
> 3. Patricia will receive $409,377 in asset distribution (her business, her home

[3] Patricia will also receive 16% of the net of Joseph's 2008 $58,800 bonus, payable in 2009, as child support plus 4% for each child's college trust account. This distribution, although set forth in the marital settlement agreement, is pursuant to the terms of the parties' custody and joint parenting agreement and, therefore, irrelevant to the distribution of the parties' assets under the marital settlement agreement.

> equity, her car, a lesser share of the escrow remaining from the sale of the marital home, 50% of assorted financial accounts and the entirety of other financial accounts). Joseph will receive $391,377 in asset distribution (the parties' Chicago Bears personal seat licenses, his home equity, a higher share of the escrow remaining from the sale of the marital home, 50% of assorted financial accounts and the entirety of other financial accounts). On this distribution, Patricia is ahead by $17,610.

Overall, Joseph will receive approximately $27,390 more than Patricia. The parties combined assets total approximately $1,101,144 ($409,377 + $391,767 +$300,000), so Joseph will receive 2.5% more than Patricia.

¶ 37 We note that the asset distribution figures in part 3 above are taken primarily from Joseph's brief, albeit verified in the record. Patricia does not contest these figures nor does she present her own calculation of what the agreement actually awards the parties or the percentage distribution actually awarded. Instead, her argument centers on what the alleged errors in the agreement cost her in terms of distribution, what she would have received in distributions if the modifications she suggests were contained in the agreement. This is not the court's focus in deciding whether the economic circumstances resulting from the agreement are unconscionable. Rather, the court must examine whether the *actual* resulting economic circumstances are unconscionable, not whether Patricia could have gotten a better deal under another scenario. Here, that actual result is a distribution of 51.25% of the assets to Joseph and

48.75% to Patricia.

¶ 38 Section 503 of the Marriage Act requires that marital property must be divided in "just proportions" in light of the relevant circumstances of the parties. *Bielawski*, 328 Ill. App. 3d at 251. However, "just proportions" means the distribution must be equitable under the circumstances, not that the distribution is mathematically equal. *Bielawski*, 328 Ill. App. 3d at 251. The court held that the property divisions in the agreement were not exactly equal but the parties agreed to them and the disparity between the distributions, cited as 45% to Patricia and 55% to Joseph, was not unconscionable. This determination is not against the manifest weight of the evidence because the evidence supports this finding and there is no clear error. Whether under our calculation of 48.75% to 51.25% or the court's 45% to 55%, Patricia received almost 50% of assets worth over $1 million, and that is not counting the amount she will receive as her share of the sale of the house and from her share of the 401(k) account. Joseph's small 2.5% (or 10%) advantage in the distribution is negligible in the face of Patricia's receipt of almost $500,000+ and is clearly not so onerous and one-sided as to make the agreement unconscionable. Accordingly, the court's determination that the economic circumstances resulting from the agreement were not unconscionable is not against the manifest weight of the evidence.

¶ 39 *Prima Facie* Case

¶ 40 The court decided, once all the evidence was weighed, that neither the circumstances leading to the agreement nor the economic circumstances resulting from

the agreement rendered the agreement unconscionable. As stated above, its determinations were not against the manifest weight of the evidence. In order to present a *prima facie* case on either her claim for rescission of the agreement due to mistake or her claim for vacation\modification of the agreement pursuant to section 502(b) claim, Patricia had to show the agreement was unconscionable and should not be enforced. The court's finding that the agreement was not unconscionable and should not be vacated on that basis necessarily means that Patricia failed to present a *prima facie* case on either of her claims. Accordingly, the court did not err in granting a directed finding in favor of Joseph.

¶ 41 We need not belabor Patricia's arguments regarding the materiality of the alleged mistake, whether the mistake was unilateral or mutual, whether the court erred in finding there was no mutual mistake or in failing to consider whether there was a unilateral mistake or whether she exercised due care in signing the agreement. Without a finding of unconscionability, the type or materiality of the mistake makes little difference. Because the court found the agreement was not unconscionable and should be enforced, Patricia's rescission claim would fail regardless of whether the mistake was mutual or unilateral. Nor need we consider Patricia's assertion, citing *Agustsson*, 223 Ill. App. 3d at 518, that the agreement's failure to reflect the parties' understanding is an independent basis for vacating the agreement. An agreement's failure to reflect the parties' understanding is the basis for vacating or rescinding the agreement only because that failure is a "mistake." *Agustsson*, 223 Ill. App. 3d at 518. As stated

above, given that the agreement was not unconscionable, we need not consider the matter of mistake.

¶ 42 For the reasons stated above, we affirm the judgment of the circuit court that the agreement was not unconscionable and its decision granting Joseph's motion for a directed finding.

¶ 43 Affirmed.