

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW FURER,
Appellant/Cross-Respondent,
vs.
ELOISA FURER,
Respondent/Cross-Appellant.

No. 51198

FILED

JUN 10 2010

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal and cross-appeal from a district court divorce decree. Second Judicial District Court, Family Court Division, Washoe County; Chuck Weller, Judge.

This court generally will uphold a district court ruling in a divorce proceeding if it is supported by substantial evidence and is “otherwise free of a plainly appearing abuse of discretion.” Williams v. Waldman, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992). “Where a trial court, sitting without a jury, has made a determination upon the basis of conflicting evidence, that determination should not be disturbed on appeal if it is supported by substantial evidence.” Id. (internal quotation marks omitted).

Post-nuptial agreement

First, substantial evidence supports the district court’s conclusion that the post-nuptial agreement (PNA) was invalid. Respondent/cross-appellant Eloisa Furer and her former attorney, Sandra Unsworth, both testified that appellant/cross-respondent Andrew Furer and Eloisa had extensive discussions about the PNA outside the presence of their attorneys and that Andrew, a former attorney, gave Eloisa legal advice with regard to whether New Jersey law would apply to this case

and whether the settlement Eloisa was to receive under the PNA was fair. Moreover, there was testimony that Andrew discouraged Eloisa from contacting a New Jersey lawyer, when Unsworth suggested she do so in order to get advice as to what her rights would be under New Jersey divorce law. Thus, substantial evidence supported the district court's determinations that Andrew acted as Eloisa's attorney and failed to discharge his duties to her by ensuring that she received appropriate advice from independent counsel. See id.

Because this finding was not reliant on the district court's belief that, absent the PNA, Eloisa would have been entitled to half of the parties' estate under Nevada law, it is unnecessary to address whether the district court wrongly assumed that Nevada law, rather than New Jersey law, would apply. We also note that Andrew's arguments based on Applebaum v. Applebaum, 93 Nev. 382, 566 P.2d 85 (1977), and Epperson v. Roloff, 102 Nev. 206, 719 P.2d 799 (1986), lack merit. Accordingly, we affirm the district court's conclusion that the PNA was invalid due to Andrew's role as Eloisa's counsel and his failure to fairly discharge his duties to her.

Marriage settlement agreement

Next, we consider whether the district court abused its discretion by finding that the marriage settlement agreement (MSA) was valid. As an initial matter, Eloisa's argument regarding Lewis v. Lewis, 53 Nev. 398, 2 P.2d 131 (1931), lacks merit, given that the district court recognized its authority to reject the MSA but declined to do so.

Here, the district court properly applied the rule that marital agreements are "enforceable unless unconscionable, obtained through fraud, misrepresentation, material nondisclosure or duress." Sogg v.

Nevada State Bank, 108 Nev. 308, 312, 832 P.2d 781, 783-84 (1992) (internal quotation marks omitted). The evidence showed that Eloisa and Andrew's decision to divorce led to the negotiation of the MSA. Moreover, before the MSA was signed, the parties had stopped living together, and Eloisa had obtained a temporary protection order against Andrew. Thus, substantial evidence supported the district court's conclusion that the fiduciary relationship between Eloisa and Andrew ended prior to the execution of the MSA. See Williams, 108 Nev. at 472 n.4, 836 P.2d at 618 n.4 (holding that "whether a confidential relationship survives an announcement of an intention to seek a divorce necessarily depends on the circumstances of each case").

Substantial evidence also supported the district court's conclusion that the presumption of fraud under Sogg was rebutted because Eloisa not only was represented during the negotiations by Unsworth, but also, she later fired Unsworth and hired Bonnie Mahan, who represented her at the time that she signed the MSA. Given her opportunity to obtain independent counsel and awareness of the estate assets and her rights, the district court did not abuse its discretion in finding that the presumption of fraud was overcome. See Sogg, 108 Nev. at 312, 832 P.2d at 784 (setting forth the factors to consider in determining whether a party was actually disadvantaged by a marital settlement agreement).¹

¹Eloisa argues that Andrew prevented Unsworth from verifying the parties' marital assets. The evidence, however, supported the conclusion that she, rather than Andrew, told Unsworth not to seek documentation of the assets. Moreover, there was no evidence that Andrew prevented Unsworth from seeking such documentation.

As to the MSA's incorporation of the PNA's terms, the circumstances behind the negotiation of the PNA, rather than its substantive terms, rendered that document voidable. Thus, nothing prevented the parties from entering into a valid MSA incorporating the same terms, and the district court did not abuse its discretion by declining to require Andrew to show that he had cured the circumstances that rendered the PNA invalid. Accordingly, the district court did not abuse its discretion by concluding that the MSA was valid.

The effective date of the MSA

Having concluded that the MSA was valid, we now turn to when the MSA became effective, so that Eloisa was entitled to receive her shares of the stock and the dividends received on those shares.

The MSA stated that Andrew would transfer shares of stock to Eloisa, but it was silent as to when the shares would be transferred. The MSA incorporated the terms of the PNA, which stated that Eloisa was entitled to receive her property "[i]n the event of a legal separation or divorce." Because the divorce proceeding had been instituted, the district court did not abuse its discretion by finding that Eloisa was entitled to the shares as of the date that the court declared the MSA to be valid. See Williams, 108 Nev. at 471, 836 P.2d at 617 (holding that district court rulings in divorce cases will be upheld if they are supported by substantial evidence and free of plainly appearing abuse of discretion).

Temporary support

Next, the district court did not abuse its discretion by awarding Eloisa temporary support when she was challenging the validity of the PNA and the MSA. See id. The district court has discretion in any divorce action to require either party to pay the other party money

necessary for temporary maintenance or to enable the other party to participate in the case. NRS 125.040(1)(a) and (c); see Spreckles v. Spreckels, 244 P.2d 917 (Cal. App. 2d 1952) (holding that a court may award necessary temporary support to a party who is attacking a property settlement agreement as void, despite the fact that the agreement expressly prohibits such an award). Moreover, substantial evidence supported the district court's award of support, given that Eloisa had a relatively small amount of money, which did not produce income, whereas Andrew controlled the vast majority of the couple's wealth, including the income-producing shares of stock. See Sargeant v. Sargeant, 88 Nev. 223, 227, 495 P.2d 618, 621 (1972) (holding that a party should not have to liquidate her savings and jeopardize her future subsistence in order to proceed in the divorce action). Therefore, the district court did not abuse its discretion by awarding Eloisa temporary support for the time before the MSA was approved.

Attorney fees

The final issue is whether the district court abused its discretion by concluding that Eloisa was entitled to attorney fees. Under NRS 125.150(3), the district court may award attorney fees to either party if those fees are in issue. Given the disparity in the parties' wealth, we conclude that the district court did not abuse its discretion by awarding attorney fees to Eloisa.² See Williams, 108 Nev. at 471, 836 P.2d at 618.

²Andrew also argues on appeal that if he is awarded attorney fees, Eloisa should be further sanctioned in the amount of her attorney fees in order to effectuate the district court's sanction order. Because we hold that the district court did not abuse its discretion by finding that Eloisa

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For the reasons discussed above, we

ORDER the judgment of the district court AFFIRMED.³

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Chuck Weller, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Robison Belaustegui Sharp & Low
Woodburn & Wedge
Donn W. Prokopius, Chtd.
Eloisa Furer
Washoe District Court Clerk

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was entitled to attorney fees, we do not address Andrew's argument for additional sanctions.

³We have also considered Eloisa's arguments as to asset management and the Asian jars and Andrew's arguments as to contract damages, and we conclude that substantial evidence supports the district court's order as to these issues. See Williams, 108 Nev. at 471, 836 P.2d at 618.