Circuit Court for Baltimore County
Case No: 3C-16-3344

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0266

September Term, 2017

MAREK MICHNIEWICZ

v.

BARBARA MICHNIEWICZ

Eyler, Deborah S.
Shaw Geter
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: April 11, 2018

Appellant, Marek Michniewicz (henceforth, "Mr. M," to save a little length in this opinion), challenges the invalidation by the Circuit Court for Baltimore County of a prenuptial agreement (the Agreement) executed between he and Appellee (his now former-spouse), Barbara Michniewicz (henceforth, "Ms. M," for like purpose). Mr. M avers that Ms. M entered into the Agreement freely, knowingly and voluntarily. Mr. M protests also that the circuit court granted erroneously Ms. M a monetary award. Specifically, he asserts that the parties are bound by a term in the Agreement stating "[t]hat each party, in the event of a separation, shall have no right as against the other by way of claims for support, alimony, attorney fees, costs, or division of property."

Facts and Legal Proceedings

Mr. M emigrated from Poland to the United States in 1986. Mr. and Ms. M, also a Polish native, met while Mr. M was on a business trip in Poland. They became engaged to be married in February 2004 and moved to the U.S. the following October. At that time, Mr. M worked as an engineer at Sun Automation, earning approximately $60,000.00 annually. Ms. M was unemployed.[1] The parties discussed (in Polish) and agreed to enter into a prenuptial agreement. Mr. M, with little-to-no contribution from Ms. M, stitched together the Agreement, in English, from documents he found on the internet. Neither party sought legal advice or document review by an attorney during the drafting and

[1] Mr. M was a 68-year-old retiree at the time of the circuit court proceedings. He lived (and lives) on social security receiving approximately $26,000.00 annually. Before retirement, he made over $100,000.00 per year as an engineer at Sun Automation. Ms. M, conversely, was 45 years old, and (remaining still) a clinical nurse supervisor at The Johns Hopkins University Hospital, earning $80,000.00 per year.

execution of the Agreement. Ms. M testified that she did not understand the provisions in the Agreement and would not have understood them, even had they been read to her in Polish. She stated that Mr. M explained that the purpose of the Agreement was to "protect" their pre-marital property. The Agreement, however,

> made no distinction between property owned prior to marriage and property acquired after the date of the marriage, stating that properties which belong to a party remain that party's personal estate. The agreement also provided for the parties' respective waivers of claims against one another [in the event of a separation][[2]] for division of property.

(quotation marks omitted). The parties signed the Agreement on 29 November 2004. They married on 6 December 2004.[3] Mr. M listed, without valuation, in the Agreement, as his pre-marital property: (1) a 401K account; (2) an ESOP account; and, (3) improved residential real property at 16 Old Forge Garth, Sparks, MD 21152. Ms. M listed, also absent valuation: (1) improved residential real estate at ul. Kozia 21/1, 54-104 Wroclaw, Poland; (2) a savings account in the Pekao SA Bank in Poland; and, (3) a savings account in Charter One Bank in the U.S.[4] Moreover, Ms. M testified that

> [Mr. M failed] to identify over $125,000 in other properties owned by him, such as $45,000 in cash he had hidden in the ceiling of his basement, $58,000 in a savings account, coins having a value of $10,000, jewelry worth $15,000, and other valuable properties.

Mr. M filed in the circuit court a complaint for absolute divorce on 30 March 2016. Ms. M filed a counter-claim seeking a limited divorce and challenging the validity of the

[2] The Agreement made no mention of the effect a "divorce" might have upon the distribution of the marital assets.

[3] Ms. M was 33 and Mr. M was 56 when they married.

[4] Ms. M owned no real property in the U.S. at the time the parties married.

Agreement. She requested a $639,696.00 monetary award. Before trial, the parties entered into a joint stipulation concerning marital and non-marital property, indicating that "between the time of the parties' 2004 wedding and the 2017 divorce trial, [Mr. M] had acquired property having a total value of $1,349,371; the total value of all properties acquired by [Ms. M] during the parties' marriage was only $69,980."

A bench trial was held on 1-3 February 2017. On 5 April 2017, the court entered a judgment granting Mr. M's complaint for an absolute divorce. The court found further, on the merits of Ms. M's challenge to the efficacy of the Agreement, that

> [Mr. M] ha[d] the burden of proof in establishing the validity of the Agreement. Based on the testimony presented and the evidence admitted, [Mr. M] has failed to meet his burden of proving that the November 29, 2004 Agreement was not "overreaching" in its procurement. The Court makes the following findings of fact: that [Mr. M] was the dominant party, that he was more insistent about having the Agreement procured, that [Mr. M] was the primary researcher and drafter of the Agreement, that it was written in English with which [Mr. M] was better equipped to understand having been in the U.S. eleven years longer than [Ms. M], that [Ms. M]'s English skills were not proficient enough for her to understand the Agreement when she signed it, that the assets of [Mr. M] were incomplete and were not valued (as also were [Ms. M]'s), and [Mr. M] had more life experience, particularly living in the U.S. Therefore, the Court finds that the Prenuptial Agreement is invalid and unenforceable because [Ms. M] did not enter into the Agreement freely, knowingly, and understandably . . . [and] upholding the Agreement would be unconscionable.

Moreover, the circuit court, considering the factors enumerated in Md. Code (1957, 2013 Repl. Vol., 2015 Supp.), § 8-205(b) of the Family Law Article ("Fam. Law"), found that "in order to achieve equity between the spouses . . . a fair and equitable monetary award [shall] be entered against [Mr. M] in favor of [Ms. M] in the amount of $425,000[.00]."

Analysis

Generally, when an action is tried without a jury, we review the case on the law and the evidence. We will not set aside the judgment of the trial court on the evidence unless found to be clearly erroneous on the record. We give deference to the trial court's findings as to the credibility of witnesses and weight given to evidence. Md. Rule 131(c); *Shallow Run Ltd. Partnership v. State Highway* Admin., 113 Md. App. 156, 173, 686 A.2d 1113, 1122 (1996) (quoting *Nixon v. State*, 96 Md. App. 485, 491–92, 625 A.2d 404, 407 (1993)). Thus, "if there is any competent, material evidence to support the factual findings below, we cannot hold those findings" clearly erroneous. *Cannon v. Cannon*, 156 Md. App. 387, 404, 846 A.2d 1127, 1136 (2004), *aff'd*, 384 Md. 537, 865 A.2d 563 (2005).

I. The Agreement.

Cannon v. Cannon explains best that "[t]he real test in a determination of the validity of an antenuptial agreement is whether there was *overreaching*, that is, whether in the atmosphere and environment of the confidential relationship there was unfairness or inequity in the result of the agreement or in its procurement." 384 Md. 537, 556–57, 865 A.2d 563, 574 (2005) (quoting *Hartz v. Hartz*, 248 Md. 47, 57, 234 A.2d 865, 871 (1967)) (emphasis added). Moreover,

> [a]fter recognizing the importance of the confidential relationship that existed between the parties, *which compelled the party seeking to enforce the agreement* [,*regardless of gender as a means to prevent fraud*,] *to shoulder the ultimate burden of* [*proving its validity*,] we reiterated that "this confidential relationship calls for frank, full and truthful disclosure of the worth of the property, real and personal, as to which there is a waiver of rights in whole or in part, so that he or she who waives can know what it is he or she is waiving.

Cannon, 384 Md. at 559, 865 A.2d at 576 (quoting *Hartz*, 248 Md. at 56-57, 234 A.2d 870-71) (emphasis in *Cannon*). Thus, the party bearing the burden must prove the agreement "was entered into voluntarily, freely and with full knowledge of its meaning and effect." *Cannon*, 384 Md. at 560, 865 A.2d at 576 (emphasizing empathetically the necessity of a party's frank, full, and truthful disclosure of all property covered by the agreement, preferably with appraised values).

Mr. M asserts that Ms. M had "adequate knowledge of his assets, having been told the value of the assets prior to signing the [A]greement." Moreover, he observes that she offered no testimony regarding the fairness of the Agreement when it was signed, and she "never testified that, had she known at the time she signed the document what she now knows, she would have refused to sign [it]."

Ms. M contends that Mr. M "not only failed to ascribe any dollar values to the [] assets which he did disclose in the [A]greement, but he also failed to disclose numerous other assets which were proven at trial to have an aggregate value exceeding $125,000." Ms. M maintains further that she

> did not understand the effect of the agreement due to its being written in English at a time she was speaking exclusively in Polish, that she was not aware of what rights she was waiving in the agreement, and that [Mr. M] misled her regarding the scope of the property protections he was trying to create for himself in the agreement.

The evidence from the February 2017 trial, credited by the trial judge, led him to conclude that the Agreement was unconscionable when the parties executed it. Mr. M failed to provide, in the Agreement, a full, frank, and truthful disclosure of the extent of his

assets.[5] For example, "Mr. M testified that [Ms. M] was unaware that [he] had $40,000 of unlisted cash stored in the basement ceiling of his home."

Moreover, Ms. M's English comprehension shortcomings at the time she entered into the Agreement in 2004 appeared to the trial judge to be significant. When Ms. M emigrated to the U.S. in 2004, as opposed to Mr. M's emigration in 1986, her English reading and writing capabilities were inadequate (and inferior significantly to Mr. M's) to comprehend the intricacies of an *English* language legal document (drafted primarily by Mr. M). As the circuit court noted, "there must be a number of Polish lawyers in Baltimore [or Maryland] who are fluid in speaking, reading and writing Polish. Such an attorney could have prepared the Agreement in Polish," as well.

Mr. M argues that Ms. M's English reading and writing abilities were not as poor as she represented. Mr. M avers that Ms. M

> had been visiting the United States on an approximate yearly basis since the 1990s, and had several jobs in the United States going back to 2002. [Ms. M] also acknowledged that she took English for four years in high school, and received "A's" in multiple college level English classes. Further, [Mr. M's] daughter, the only person fluent in both English and Polish present at

[5] Mr. M contends that Maryland law, citing *Hartz v. Hartz*, 248 Md. 47, 57, 234 A.2d 865, 871 (1967), does not mandate the disclosure of all pre-marital assets in a prenuptial agreement. Although this assertion is correct in principle, the Court in *Cannon v. Cannon* recognized the presence or absence of this information as a factor to be considered when it "strongly encourage[d] . . . that a party drafting an antenuptial agreement complete a frank, full, and truthful disclosure document . . . [the Court of Appeals] explained also that such a written disclosure may be 'the key that turns the lock of the door leading to impregnable validity' of the antenuptial agreement." 384 Md. 537, 560 n.10, 865 A.2d 563, 576 n.10 (2005).

> the time when the agreement was signed, testified credibly[6] and at length regarding [Ms. M's] ability to speak and understand English.

Nonetheless, we concur with the circuit court's selective judgment that "speaking a foreign language, and reading and writing it are substantially different. Because an individual can speak a foreign language on a limited basis . . . does not mean that such a person has a reading and writing equivalent."

On the record of this case, we hold that the circuit court did not err in invalidating the Agreement.

II. The Monetary Award.

When reviewing a trial court's granting of a monetary award, we will not disturb the circuit court's determination of what is, and what is not, marital property, unless that determination is clearly erroneous. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229, 752 A.2d 291, 303 (2000). We apply an abuse of discretion standard as to the circuit court's decision to grant a monetary award and in what amount. *Gallagher v. Gallagher*, 118 Md. App. 567, 576, 703 A.2d 850, 854 (1997). Within that framework, "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result." *Innerbichler*, 132 Md. App. at 230, 752 A.2d at 304. Moreover, we consider evidence produced at trial in a light most favorable to the prevailing party, *Ryan v. Thurston*, 276 Md. 390, 392, 347 A.2d 834, 835 (1975). "[I]f there is any competent evidence to support

[6] Ms. M called two witnesses to attest to the inaptitude of her English reading and writing comprehension. The circuit court found both of these witnesses more credible and persuasive than Mr. M's daughter (from a prior marriage), who testified to the contrary.

the [] findings below, those findings cannot be held [] clearly erroneous." *Solomon v. Solomon*, 383 Md. 176, 202, 857 A.2d 1109, 1123 (2004).

The circuit court may grant a party's request for a monetary award "as an adjustment of the equities and rights of the parties concerning marital property." Fam. Law § 8-205(a). In doing so, the court

> shall determine the amount and the method of payment of a monetary award, or the terms of the transfer of the interest in property described in subsection (a)(2) of this section, or both, after considering each of the following factors:
>
> (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
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> (2) the value of all property interests of each party;
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> (3) the economic circumstances of each party at the time the award is to be made;
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> (4) the circumstances that contributed to the estrangement of the parties;
>
> (5) the duration of the marriage;
>
> (6) the age of each party;
>
> (7) the physical and mental condition of each party;
>
> (8) how and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both;
>
> (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
>
> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
>
> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

Fam. Law. § 8-205(b). Trial judges are presumed to know the law, and are not required in every instance to explain each step of his or her reasoning in reaching a decision. *Aventis*

Pasteur, Inc. v. Skevofilax, 396 Md. 405, 426, 914 A.2d 113, 125 (2007); *Zorich v. Zorich*, 63 Md. App. 710, 717, 493 A.2d 1096, 1099 (1985) ("trial judges are presumed to know the law, not every step in their thought process needs to be explicitly spelled out.").

The circuit court, upon finding the Agreement invalid, declared "all [] items listed by the parties [(in their joint-stipulation concerning marital and non-martial property)], unless excluded by valid agreement or acquired before the marriage, are deemed to be marital property and subject to this [monetary award] determination." In this regard, the circuit court, consistent with the stipulation, valued Mr. M's property acquired during the marriage at $1,349,371.00 and Ms. M's property at $69,980.00.[7] The circuit court, considering comprehensively the Fam. Law § 8-205(b) factors, found dissimilar economic circumstances existing between the parties because of, *inter alia*, their disparity in age, respective physical and mental conditions, arduousness of their eleven-year marriage, capital gain potential, and current income. Thus, the circuit court, in order to achieve equity between the parties, awarded Ms. M a monetary award of $425,000.00. On the record, we find as completely in-bounds the exercise of the circuit court's discretion granting Ms. M a monetary award in the amount found.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] The circuit court made clear that, had it upheld the Agreement, the parties "agreed pretrial that [Mr. M] would receive $1,349,371.00 [and Ms. M] would receive $69,980.00."