

STATE OF OHIO                     )  
  )ss:  
COUNTY OF LORAIN            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

JEAN MANN

C. A. No.       09CA009685

Appellant

v.

DOUGLAS MANN

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.       07 DR 068278

Appellee

DECISION AND JOURNAL ENTRY

Dated: April 5, 2010

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CARR, Judge.

{¶1} Appellant, Jean Mann (“Jean”), appeals the judgment of the Lorain County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} Douglas Mann (“Doug”) and Jean met in 1996 and began living together shortly thereafter. Doug was unable to work due to health issues arising out of his chronic alcoholism. At some point, Doug suffered a seizure, was treated at a hospital, and suffered significant injuries allegedly as a result of the negligent care he received. He filed a medical malpractice suit. Doug required help with his daily care as a result of his injuries, and Jean provided that to him. Eventually, the two decided to get married.

{¶3} Jean planned a small wedding at the Oberlin Municipal Court on May 17, 2002. On May 16, 2002, she was asked to accompany Doug to his attorney’s office where they both signed an antenuptial agreement. The antenuptial agreement stated that Doug had filed a

medical malpractice suit that, “if successful, may generate in excess of a million or millions of dollars as compensation for Douglas’ injuries and in anticipation of his future care and needs.” Paragraph 3(A)(3) of the antenuptial agreement stated that, in the event of divorce or dissolution of marriage within ten years, neither party shall pay spousal support to the other.

{¶4} On September 11, 2007, Jean filed a complaint for divorce, and Doug filed an answer. On April 14, 2008, Jean filed an amended complaint and a motion to invalidate the antenuptial agreement. Doug filed an answer to the amended complaint and a counterclaim for divorce.

{¶5} The domestic relations court held a hearing on Jean’s motion to invalidate the antenuptial agreement on June 26, 2008. On July 17, 2008, the domestic relations court issued a decision in which it concluded that the antenuptial agreement is valid and enforceable. The trial court held a hearing on July 20, 2009, on the complaint and counterclaim for divorce. On September 1, 2009, the domestic relations court issued a journal entry and decree of divorce. In reliance on paragraph 3(A)(3)<sup>1</sup> of the antenuptial agreement, the domestic relations court ordered that “neither party shall pay to the other any type of support[.]” Jean filed a timely appeal, raising one assignment of error for review.

## II.

### **ASSIGNMENT OF ERROR**

“THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY FINDING THE PRENUPTIAL AGREEMENT TO BE VALID AND ENFORCEABLE, THEREBY BARRING APPELLANT’S CLAIM FOR SPOUSAL SUPPORT.”

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<sup>1</sup> The trial court identified this part of the antenuptial agreement as “Section 4(A)(3),” although the agreement does not contain a numbered section or paragraph 4. Instead it moves from paragraph 3(A) and 3(B) to paragraph 5.

{¶6} Jean argues that the trial court erred by concluding that the antenuptial agreement is valid and enforceable. Specifically, Jean first argues that the trial court failed to consider whether the provision in the antenuptial agreement regarding spousal support was unconscionable at the time of the divorce. Jean further argues that the agreement is invalid as a result of duress, coercion, and/or overreaching. This Court disagrees.

{¶7} The validity of antenuptial agreements has long been recognized in Ohio. See, e.g., *Stilley v. Folger* (1846), 14 Ohio 610. The Ohio Supreme Court has defined an antenuptial agreement as “a contract entered into between a man and a woman in contemplation, and in consideration, of their future marriage whereby the property rights and economic interests of either the prospective wife or husband, or both, are determined and set forth in such instrument.” *Gross v. Gross* (1984), 11 Ohio St.3d 99, 102.

{¶8} The *Gross* court has held that antenuptial agreements are valid and enforceable:

“(1) if they have been entered into freely without fraud, duress, coercion, or overreaching; (2) if there was full disclosure, or full knowledge and understanding of the nature, value and extent of the prospective spouse’s property; and (3) if the terms do not promote or encourage divorce or profiteering by divorce.” *Id.* at paragraph two of the syllabus.

Provisions in the antenuptial agreement which address spousal support “must meet the additional test of conscionability at the time of the divorce or separation.” *Id.* at paragraph four of the syllabus.

{¶9} The trial court’s determination of the validity of the antenuptial agreement in regard to the first three *Gross* factors implicates questions of fact, so that the trial court’s determination will not be reversed absent an abuse of discretion. See *Bisker v. Bisker* (1994), 69 Ohio St.3d 608, 609-10. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v.*

*Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Id.*

{¶10} The fourth prong of the *Gross* test, specific to spousal support provisions, implicates a mixed question of law and fact. See *Saari v. Saari*, 9th Dist. No. 08CA009507, 2009-Ohio-4940. In *Saari*, we stated:

“A determination of whether a written contract is unconscionable is an issue of law which a court reviews de novo. When a trial court makes factual findings, however, supporting its determination that a contract is or is not unconscionable, such as any findings regarding the circumstances surrounding the making of the contract, those factual findings should be reviewed with great deference.” (Internal citations and quotations omitted.) *Id.* at ¶11.

Moreover, the trial court must look to the factors governing the allowance of spousal support in R.C. 3105.18 when determining the issue of conscionability as it relates to provisions in the antenuptial agreement regarding spousal support. *Gross*, 11 Ohio St.3d at 109-10; *Saari* at ¶12.

Those factors include:

- “(a) The income of the parties[;]
- “(b) The relative earning abilities of the parties;
- “(c) The ages and the physical, mental, and emotional conditions of the parties;
- “(d) The retirement benefits of the parties;
- “(e) The duration of the marriage;
- “(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
- “(g) The standard of living of the parties established during the marriage;
- “(h) The relative extent of education of the parties;

“(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

“(j) The contribution of each party to the education, training, or earning ability of the other party[;]

“(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

“(l) The tax consequences, for each party, of an award of spousal support;

“(m) The lost income production capacity of either party that resulted from that party’s marital responsibilities;

“(n) Any other factor that the court expressly finds to be relevant and equitable.” R.C. 3105.18(C)(1).

{¶11} The *Gross* court offered the following examples of circumstances which might indicate the unconscionability of a spousal support provision in an antenuptial agreement:

“an extreme health problem requiring considerable care and expense; change in employability of the spouse; additional burdens placed upon a spouse by way of responsibility to children of the parties; marked changes in the cost of providing the necessary maintenance of the spouse; and changed circumstances of the standards of living occasioned by the marriage, where a return to the prior living standard would work a hardship upon a spouse.” *Gross*, 11 Ohio St.3d at 109, fn. 11.

{¶12} Jean argues that the judgment must be reversed because the domestic relations court failed to consider the fourth prong of the *Gross* test. The argument is not well taken.

{¶13} The Ohio Supreme Court has held:

“When a trial court, sitting without a jury, determines an issue but does not make separate findings of fact and conclusions of law, a reviewing court will presume the validity of that judgment as long as there is evidence in the record to support it.” *Fletcher v. Fletcher* (1994), 68 Ohio St.3d 464, 468.

{¶14} In this case, the domestic relations court enunciated the *Gross* factors, expressly noting that the terms of the antenuptial agreement must not be unconscionable. Although the trial court did not make express findings of fact or conclusions of law in regard to the fourth

prong of the test, a review of the record indicates that there is evidence to support the trial court's conclusion that the agreement is valid and enforceable.

{¶15} Jean testified that Doug suffered a debilitating injury prior to their marriage and that they went to Doug's attorney's office the day before their wedding to sign a document which would ensure that any money Doug received from his medical malpractice suit would be for Doug's rehabilitation. She admitted that the antenuptial agreement accurately stated her assets and liabilities as of the date signed. The agreement states that Jean had no assets of value and owed approximately \$9,000.00 to creditors. She admitted that she was "broke" and that Doug's financial situation was even worse. She further admitted that all the money that she wished to be considered for purposes of spousal support came from the settlement Doug received as a result of his medical malpractice case. Jean further conceded that the only thing that the antenuptial agreement does is ensure that Doug keeps that settlement money for his rehabilitation and that she signed the agreement to effect that purpose.

{¶16} Jean testified that she was working at a nursing home on the date that she signed the antenuptial agreement and that she was still working there on the date of the hearing. She testified that Doug was unable to work when they signed the agreement and he is still unable to work due to his medical condition. She testified that she and Doug have now lived separately and apart for over a year. Her complaint states that no children were born of the parties' marriage.

{¶17} There is nothing in the record to indicate that the spousal support provision of the antenuptial agreement was unconscionable as of the date of the parties' divorce. Jean admitted that the only money at issue is the money she intended to preserve for Doug's rehabilitation when she signed the agreement. Doug cannot work due to his medical condition and he

continues to require on-going care. Jean worked prior to the parties' marriage and maintains that same employment. Despite Doug's receipt of over one million dollars during the parties' marriage, Jean did not testify that her standard of living had changed or that reliance on her own income would cause her a hardship. Accordingly, despite the domestic relations court's failure to make any express finding of fact or conclusion of law regarding conscionability of the spousal support provision of the antenuptial agreement, the evidence in the record supports the trial court's judgment that the agreement is valid and enforceable.

{¶18} Jean next argues that the antenuptial agreement is not valid or enforceable because she signed it as a result of duress, coercion, and/or overreaching by Doug. The argument is not well taken.

{¶19} Jean asserts that she was not made aware of the nature of the agreement she was signing. The agreement, however, is captioned "Antenuptial Agreement" in italicized and bold font which is larger than the font size of the body of the document. Both witnesses to the execution of the agreement, attorneys Lisa Locke-Graves and Anthony Rich, testified that the document was identified and thoroughly explained and that Jean was given the opportunity to ask questions and to consult with an attorney. Jean admitted that she signed the document which states in paragraph 12 that she was advised that she had the right to, and should in fact, seek the advice of her own counsel regarding the terms of the agreement but that she elected not to do so. Jean testified that she "looked through it" but that she did not really read the document because she trusted her fiancé's attorney. She admitted that the document is written in clear and easily understandable language. She admitted that she knew that the purpose of the document was to ensure that Doug would retain any medical malpractice judgment monies for his rehabilitation.

{¶20} Jean asserts that the timing of the signing one day before her wedding also demonstrated overreaching and served to coerce her into signing the agreement. The Ohio Supreme Court, however, has recognized that the trial court may reasonably consider the size and formality of the impending wedding when considering whether there is coercion or overreaching when a party is presented with an antenuptial agreement for the first time shortly before the wedding. *Fletcher*, 68 Ohio St.3d at 468. Specifically, where the impending wedding is small and informal, it is reasonable for the trial court to conclude that the wedding could have been postponed to allow for consultation with an attorney regarding the proposed antenuptial agreement. *Id.*

{¶21} In this case, Jean testified that she planned that she and Doug would be married by the Honorable Tom Januzzi at the Oberlin Municipal Court. She testified that only her mother, her son, and one of her friends attended. Jean testified that she and Doug had a potluck reception at their home. She admitted that the wedding could have easily been postponed.

{¶22} Based on a review of the evidence, it was not unreasonable for the domestic relations court to find, under these circumstances, that there was no duress, coercion, or overreaching in regard to the parties' execution of the antenuptial agreement. Accordingly, the trial court did not abuse its discretion when it concluded that the antenuptial agreement is valid and enforceable. Jean's sole assignment of error is overruled.

### III.

{¶23} Jean's assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas, Domestic Relations Division, is affirmed.

Judgment affirmed.



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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

MOORE, J.  
BELFANCE, P. J.  
CONCUR

APPEARANCES:

JAMES A. DEERY, and DANIEL J. GIBBONS, Attorney at Law, for Appellant.

JONATHAN ROSENBAUM, Attorney at Law, for Appellee.