

STATE OF MICHIGAN
COURT OF APPEALS

LAVONNE M. TURNER, Personal Representative of
the Estate of HORACE L. SHEFFIELD, JR.,
Deceased,

UNPUBLISHED
January 21, 1997

Petitioner-Appellee,

v

No. 191606
LC No. 95-544508

JOYCE SHEFFIELD,

Respondent-Appellant.

Before: Cavanagh, P.J., and Young and C.D. Corwin,* JJ.

PER CURIAM.

Respondent appeals as of right from a probate court order holding that the prenuptial agreement was valid and denying respondent's petition to be considered a pretermitted spouse. On appeal, respondent argues that the prenuptial agreement does not prevent her from taking her portion of her deceased husband's estate as a pretermitted spouse and that the prenuptial agreement should not be enforced. We disagree.

Prenuptial agreements are expressly authorized by MCL 557.28; MSA 26.165(8). Prenuptial agreements which relate to the parties' rights upon the death of one of the parties are favored as a matter of public policy. *In re Benker Estate*, 416 Mich 681, 688; 331 NW2d 193 (1982); *Rinvelt v Rinvelt*, 190 Mich App 372, 378; 475 NW2d 478 (1991). A valid prenuptial agreement requires (1) that the agreement is fair, equitable, and reasonable under the circumstances; (2) that the agreement was entered into voluntarily by both parties, with full disclosure and with each party understanding his rights and the extent of the waiver of such rights; and (3) that the agreement is free from fraud, lack of consent, mental incapacity, or undue influence. *Id.* at 378-379.

We will not reverse findings of fact by a probate judge sitting without a jury unless the evidence clearly preponderates in the opposite direction. *In re Jones*, 128 Mich App 690, 694; 341 NW2d 179 (1983). We cannot say that in the present case the evidence preponderates contrary to the

* Circuit judge, sitting on the Court of Appeals by assignment.

probate court's findings. Respondent has failed to meet her burden of establishing that the prenuptial agreement was invalid. See *Booth v Booth*, 194 Mich App 284, 289; 486 NW2d 116 (1992). We further conclude that respondent is not a pretermitted spouse because "the testator provided for the spouse by transfers outside the will and the intent that the transfers were in lieu of a testamentary provision is shown by declarations of the testator, by amount of transfers, or by other evidence." MCL 700.126; MSA 27.5126. Finally, contrary to respondent's assertions, an evidentiary hearing is not necessary because respondent should have included evidence supporting her arguments with her brief in support of her petition to be considered a pretermitted spouse.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Robert P. Young
/s/ Charles D. Corwin