IN THE COURT OF APPEALS OF IOWA

No. 1-948 / 11-0940
Filed February 15, 2012

IN THE MATTER OF THE ESTATE OF JUSTIN F. THOMPSON

MARY C. EWOLDT,
Co-Executor-Appellant.

Appeal from the Iowa District Court for Palo Alto County, Don E. Courtney, Judge.

A co-executor and beneficiary of the estate appeals the probate court's transfer of life insurance proceeds to the widow and approval for spousal allowance. **AFFIRMED.**

Jeffrey D. Ewoldt of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellant.

Nicholas J. Brown of Dan Connell, P.C., Storm Lake, for Maxine Thompson.

Richard J. Barry of Montgomery, Barry & Bovee, Spencer, for George Thompson.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Mary Ewoldt is a co-executor and beneficiary of Justin Thompson's estate, as well as the surviving sister of Justin's first wife. Mary appeals from a ruling of the probate court transferring life insurance proceeds from the estate to Justin's second wife, Maxine Thompson, based on the couple's premarital agreement. Mary also challenges the probate court's approval of a spousal allowance in the amount of $1000 per month.

Because we interpret the premarital agreement—including its attachments incorporated by reference—as creating a contractual obligation for Justin to maintain the life insurance policy as an asset for Maxine, we affirm the order of the probate court directing the estate to transfer $100,226 in proceeds and interest to Maxine. Because we do not find that the court abused its discretion in providing the spousal allowance, we also affirm that order.

I. Background Facts and Proceedings

Justin and Kathleen Thompson were married for fifty years. They lived on an acreage in Cylinder, Iowa. They had no children. Kathleen died in November 2007. On August 31, 2008, Justin married Maxine Thompson and moved into her home in Emmetsburg. Maxine's first husband was Justin's brother Richard; Maxine and Richard divorced in the 1980s.

Shortly before Justin married Maxine, they entered into a premarital agreement. Under the agreement, notarized on August 25, 2008, each party waived

> all rights of dower, courtesy, homestead, distributive share, right of election against a will, widow's allowances, any spousal rights to

> separate property which may accrue in dissolution, and any other marital right arising by virtue of statute or otherwise, in and to the separate property the other party now owns or may hereafter acquire.

Paragraph 4 of the agreement discussed each party's disclosure of his or her property and financial obligations for examination by the other party. A list of Justin's assets and liabilities was attached to the agreement as Exhibit "A" and "by this reference was made a part hereof." Among Justin's assets listed in Exhibit "A" was a life insurance policy from Midland Life Insurance Company (Midland) with a cash value of $15,000 and a face value of $100,000.00 "now payable to Maxine Thompson."

As it turns out, the proceeds were not payable to Maxine because Justin had not completed the beneficiary change process. On July 23, 2008—about one month before Justin and Maxine executed their premarital agreement—Midland received a request from Justin to name Maxine as the new beneficiary of the policy. But Midland returned the ownership and beneficiary change forms to Justin without recording them. The company informed him by letter that it still needed documentation naming the executor of Kathleen's estate or her next of kin. Midland addressed the letter to Kathleen Thompson at the Cylinder address. Our record does not indicate whether Justin saw Midland's letter. The company did not receive any revised documents from Justin in response to its letter.

Justin died of heart failure on February 23, 2010, leaving Maxine as his surviving spouse. Midland paid the death benefit of $100,000 to Justin's estate based on the policy's rider on Justin's life.

Justin's will—executed on January 11, 2008—nominated his first wife's sister, Mary Ewoldt, and his brother George Thompson as co-executors of his estate. The will also listed those two individuals as the only beneficiaries of Justin's estate, with farm real estate devised to George and the remainder of the estate devised to Mary. George and Mary were appointed as executors on March 5, 2010.

On April 23, 2010, Maxine filed an application for a spousal support allowance in the amount of $3361 per month. On April 27, 2010, co-executor George Thompson filed an application for directions under Iowa Code section 633.76 (2009).[1] Specifically, George's application asserted that $100,226 in death benefits and interest from the Midland Life Insurance policy, paid to the estate, should be transferred to Justin's widow Maxine as provided in the attachment to the premarital agreement. The application noted that co-executor Mary Ewoldt was "not agreeable" to the transfer.

Mary resisted the application for directions, arguing Maxine waived all rights to Justin's property in the premarital agreement, the body of the premarital agreement did not mention the life insurance policy, and Maxine was never named as the beneficiary of the policy. Mary also filed a motion to compel

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[1] That code section provides:

> Where there are two or more fiduciaries, they shall all concur in the exercise of the powers conferred upon them, unless the instrument creating the estate provides to the contrary. In the event that the fiduciaries cannot concur upon the exercise of any power, any one of the fiduciaries may apply to the court for directions, and the court shall make such orders as it may deem to be to the best interests of the estate.

Iowa Code § 633.76.

discovery, requesting information pertaining to the surviving spouse's monthly expenses.

On June 25, 2010, the probate court held a hearing on the application for spousal support. At the start of the hearing, Mary renewed her motion to compel discovery and asked for a continuance. The court declined to continue the matter and went on to receive testimony from Maxine.

On July 15, 2010, Maxine filed an election of the surviving spouse to take her statutory share of the estate as provided by Iowa Code section 633.236.

On July 23, 2010, the court held a hearing on co-executor George Thompson's application for directions. Witnesses at that hearing included attorneys Todd Buchanan and Roger Berkland, as well as both co-executors, and the surviving spouse. The court left the record open for submission of an affidavit from Elaine Nash, a claims manager for Midland National Life Insurance Company. The Nash affidavit outlined the history of an insurance policy issued on the life of Justin's first wife Kathleen, which included a rider on Justin's life. The affidavit confirmed that the company paid $100,226 in policy rider benefits to Justin's estate on March 24, 2010.

On October 8, 2010, the probate court issued two rulings. In the first ruling, the court denied Maxine's request for spousal support, finding that given her income and assets she did not require an allowance under Iowa Code section 633.374. The court also noted that Maxine "signed a premarital agreement in which she waived her right to a widow's allowance." In the second

ruling, the court granted George Thompson's application for directions, finding it was Justin's intent that the insurance proceeds be distributed to Maxine.

On October 20, 2010, Mary filed a motion to amend or enlarge the findings and modify the ruling on the application for directions. That same day, Maxine filed a motion to reconsider. Maxine alleged the motion to amend was untimely, but if it was granted, the court should reconsider its denial of spousal support.

On November 8, 2010, Mary filed a notice of appeal from the October 8, 2010 ruling. On November 10, 2010, she filed a motion for limited remand. On November 12, 2010, the probate court issued an order finding it lacked jurisdiction to rule on the pending motions. On February 21, 2011, the Iowa Supreme Court found the motions to reconsider to be timely and the appeal to be premature. The appellate court issued procedendo, sending the case back to Palo Alto County.

On May 11, 2011, the probate court issued two new rulings. In response to Mary's motion to amend or enlarge, the court declined to modify its original ruling on the application for directions. In response to Maxine's motion to reconsider, the court reversed its earlier ruling and granted the surviving spouse an allowance of $1000 per month for twelve months. On June 9, 2011, Mary filed a notice of appeal challenging both May 11 rulings.

II. Scope and Standards of Review

We review the probate court's rulings de novo. *See In re Estate of Serovy*, 711 N.W.2d 290, 293 (Iowa 2006). We give weight to the court's fact-findings, but we are not bound by them. *Id*.

In addition, the general rule is that "issues concerning the validity and construction of premarital agreements are equitable matters subject to our de novo review." *In re Marriage of Shanks*, 758 N.W.2d 506, 511 (Iowa 2008).

We review support orders issued under section 633.374 for an abuse of discretion, keeping in mind the statute's requirement that the court "take into consideration the station in life of the surviving spouse and the assets and condition of the estate." *In re Estate of Sieh*, 745 N.W.2d 477, 479 (Iowa 2008). A premarital agreement waiving spousal support does not prevent the probate court from awarding the allowance, but the award is discretionary. Iowa Code § 596.5(2); *In re Estate of Spurgeon*, 572 N.W.2d 595, 599 (Iowa 1998).

III. Analysis

A. Did the Premarital Agreement Between Justin and Maxine Require His Estate to Pay Life Insurance Proceeds to the Surviving Spouse?

Co-executor George Thompson asked the probate court for directions under section 633.76. The question was whether the estate should transfer life insurance proceeds to Maxine Thompson, Justin's surviving spouse, as contemplated in an attachment to the couple's premarital agreement. The court determined that Justin intended Maxine to have the insurance proceeds, despite his failure to complete the process to name her as the beneficiary.

Stating that it would "enforce the terms of the premarital agreement as it is written," the probate court concluded:

> From the language of the premarital agreements, and from the credible testimony of witnesses with knowledge of the premarital

> agreement, the Court finds Justin's intent was to give Maxine the proceeds of the insurance policy in exchange for her giving up her rights to his other property. Under that agreement, Maxine Thompson is entitled [to] the insurance proceeds in the amount of $100,226.02.

Co-executor Mary Ewoldt challenges the district court's conclusions, arguing that the notation on the list of assets did not create a contractual term binding upon the estate, the court erred in relying on testimony concerning Justin's intent, and the application for directions was an improper exercise of George Thompson's authority as co-executor of the estate.

1. Effect of Notation Included with List of Justin's Assets

We turn first to the question whether the phrase "now payable to Maxine Thompson"—as used to describe the $100,000 face value of his life insurance policy listed among his assets on Exhibit "A"—created an obligation for Justin, and in turn his estate, to preserve that asset for Maxine. Mary urges us to find that the notation did not create a binding term of the premarital agreement because of language in paragraph 4 in the body of the agreement.

Both sides cite language in paragraph 4 to support their positions. That paragraph begins:

> Each party represents that each has made to the other party a fair and reasonable disclosure of all of his or her property and financial obligations; that a list of assets and liabilities was submitted to and examined by the other party and each party was thereby informed and apprised of the financial condition of the other; *that attached hereto, marked as Exhibit "A" and by this reference made a part hereof, is a list of assets and liabilities of Justin F. Thompson,* and attached hereto, marked as Exhibit "B" and by this reference made a part hereof, is a list of assets and liabilities of Maxine Thompson. That each party also represents that he or she, independent of this agreement and the exhibits

> attached hereto, has and possesses adequate knowledge of the property and financial obligations of the other party.

(emphasis added.) Maxine relies on the italicized passage to argue that the phrase "now payable" in the attachment is a term of the contract itself.

For her part, Mary points to the last sentence in paragraph 4, which reads:

> The exhibits attached hereto *shall not be used for any purpose other than provide disclosure for this agreement*, and the parties hereto agree that this premarital agreement may be recorded without said exhibits attached to set forth the contents contained herein.

(emphasis added.) Mary argues that wording "not used for any purpose" other than disclosure means that the phrase "now payable to Maxine Thompson" has no force and effect on the overall premarital agreement. Maxine replies that the disclosure language cited by Mary was included only to shield the parties' assets from public view and not to disconnect the exhibits from the core of the agreement.

Premarital agreements are treated in the same manner as ordinary contracts. *Gonzalez,* 561 N.W.2d at 96. Because such agreements are generally favored in the law, courts liberally construe them to carry out the intention of the parties. *In re Marriage of Christensen,* 543 N.W.2d 915, 918 (Iowa Ct. App. 1995).

Under the doctrine of incorporation by reference, when a written contract refers to another writing, the two documents will be interpreted together as the agreement of the parties. *See In re Estate of Kokjohn*, 531 N.W.2d 99, 101 (Iowa 1995). In this case, paragraph 4 of the premarital agreement signed by Justin and Maxine expressly incorporated the exhibits listing the assets of the

parties. Accordingly, we interpret the notation that the $100,000 face value of the life insurance policy was "now payable" to Maxine as evidence of Justin's intent that she receive those proceeds upon his death. The last sentence of paragraph 4 does not dissuade us from this interpretation. We read that sentence as allowing the parties to a premarital agreement to limit public access to their financial disclosures, not as an exception to the doctrine of incorporation by reference. *SeeDickson v. Hubbell Realty Co*., 567 N.W.2d 427, 430 (Iowa 1997) (reiterating rules of contract interpretation: "Because we give effect to the language of the entire contract, it is assumed that no part of it is superfluous and an interpretation that gives a reasonable meaning to all terms is preferred to one that leaves a term superfluous or of no effect.").

In general, a party's disclosure of his or her assets as part of a premarital agreement would not establish an affirmative obligation for the party to maintain that asset. Indeed, paragraph 5 of the agreement between Justin and Maxine allows each party to retain control of the property they own free of any claim by the other party that would normally accrue as a result of their marriage. But a different situation arises when the party expressly guarantees when listing the asset that it is "now payable" to the other party. By qualifying that his ownership of the insurance policy was subject to Maxine receiving the death benefits, Justin bargained away his ability to dispose of that asset in a contrary manner. Before signing the premarital agreement, Maxine had the right to a "fair and reasonable" disclosure of Justin's financial situation. Iowa Code § 596.8(3); *see Shanks*, 758 N.W.2d at 519. The disclosure in Exhibit "A" informed Maxine that Justin owned

a life insurance policy with a cash value of $15,000 and that she would receive its face value of $100,000 when the proceeds were "payable." To interpret the agreement otherwise would fail to carry out the intention of the parties.

The Iowa Uniform Premarital Agreement Act specifically provides that parties to a premarital agreement may contract with respect to "[t]he ownership rights in and disposition of the death benefit from a life insurance policy." Iowa Code § 596.5(e) (2011). Justin and Maxine contracted for the disposition of Justin's death benefits from the Midland policy by signing the agreement which embraced the attachments as part of their overall contract. We believe that the probate court was correct in enforcing that provision of their contract.

2. Extrinsic Evidence of Parties' Intent

As an alternative argument, Mary characterizes the phrase "now payable" as too indefinite and ambiguous to create an enforceable contractual obligation. A court may use extrinsic evidence to aid in the interpretation of the contract. *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 439 (Iowa 2008). Extrinsic evidence may include the situation and relations of the parties, statements made during preliminary negotiations, the subject matter of the transaction, and the course of dealing between the parties. *See Peak v. Adams*, 799 N.W.2d 535, 544 (Iowa 2011). The key is to ascertain the mutual intent of the parties to the contract. *Id*.

In its efforts to interpret the premarital agreement, the probate court considered the testimony of Roger Berklund, Todd Buchanan, co-executor George Thompson, and Maxine Thompson. Attorney Berklund represented

Justin in 2008 and drafted the premarital agreement on Justin's behalf. Berklund testified that Justin informed him he had life insurance through Midland with a cash value of $15,000 and a death benefit of $100,000. Justin told his attorney he had changed the policy to designate Maxine as the beneficiary. Based on that information from his client, Berklund drafted the language in Exhibit "A" declaring the policy's face value of $100,000 was "now payable to Maxine Thompson."

When he drafted the agreement, Berklund had not seen any of the insurance company records. Midland's records indicate that on July 20, 2008, Justin sent the insurer an ownership and beneficiary change form, designating Maxine as the new beneficiary. On July 23, 2008, the company sent a letter addressed to Kathleen Thompson in Cylinder. The letter stated that the forms received were "unrecorded" because the company needed additional documentation concerning Kathleen's death before making the change. The letter included the following sentence underlined and boldfaced: "Please be advised that no changes have been made to your policy at this time." The company's records, offered as exhibits at the July 23, 2010 hearing, do not show whether Justin received Midland's letter.

Berklund testified that he accepted Justin's explanation of the insurance situation because he knew Justin had been an insurance agent himself. Berklund also testified that in hindsight he recognizes it would have been better to address the life insurance policy in the body of the premarital agreement. But despite the drafting deficiencies, the attorney maintained it was Justin's intent

"that the policy was to go to Maxine upon his death." Berklund testified: "I thought it was part of the consideration for the whole agreement, that she was giving up things and she had limited assets and he was giving her this here to live on."

Maxine's attorney, Todd Buchanan, also testified at the July 23, 2010 hearing. He told the probate court that when he advised Maxine about the terms of the premarital agreement, she was aware that if Justin died before she did, she would receive $100,000 in death benefits. Attorney Buchanan expressed his belief that Justin intended to provide the life insurance proceeds to Maxine and that his client viewed the proceeds as consideration for entering the contract.

Maxine testified that Justine told her "[h]e had a life insurance worth a hundred thousand dollars, and if anything happened to him, I would get that and he wouldn't have to worry about me." She testified Berklund explained the same thing to her in Justin's presence. George Thompson told the probate court he was trying to carry out his brother's wishes that Maxine receive the life insurance proceeds because "Justin would want to take care of her."

The probate court concluded that these four witnesses all gave credible accounts of Justin's intent that Maxine receive the life insurance proceeds. We defer to the probate court's credibility determination as it relates to the interpretation of the prenuptial agreement.

We also find the probate court's conclusion supported by another rule of contract interpretation: "[W]hen there are ambiguities in a contract, they are strictly construed against the drafter." *See Iowa Fuel & Minerals, Inc. v. Iowa*

State Bd. of Regents, 471 N.W.2d 859, 862–63 (Iowa 1991). In this case, attorney Berklund, acting on Justin's behalf, drafted the premarital agreement. Accordingly, any ambiguity in the "now payable" language should be construed as binding his estate to fulfill the contractual promise made to Maxine.

We turn next to Mary's argument concerning materiality. She contends that even if we assume it was Justin's intent that Maxine benefit from the policy, the provision was not material to the premarital agreement because Maxine testified she would have entered the marriage even without the promise of receiving the proceeds. Maxine challenges Mary's framing of the question. She contends the death benefit was consideration for her entering the premarital agreement in which she gave up all right and title to Justin's property.

Under Iowa's uniform act, a premarital agreement is enforceable without consideration other than the marriage. Iowa Code § 596.4. But that does not mean the parties are not free to bargain for additional performance in return for their own promise to forego certain financial advantages that would normally come with the marriage. *See Harllee v. Harllee*, 565 S.E.2d 678, 684 (N.C. Ct. App. 2002) (holding that additional consideration recited in the premarital agreement in the form of defendant's promise to pay plaintiff $10,000.00 subjected defendant to liability for breach); *see also Schultz v. Duitz*, 69 S.W.2d 27, 30 (Ky. App. 1934) ("A marriage contract may be supported by the mutual promise of the parties—the promise of one to marry the other. But if the contracting parties choose to pay or promise an additional consideration, they will be bound thereby just the same as in commercial transactions.").

We conclude the provision of the premarital agreement conveying Justin's promise that Maxine would receive his life insurance proceeds was a material term of their contract. We agree with the probate court's interpretation of the premarital agreement.

3. Claims of Procedural Irregularities

In addition to contesting the probate court's interpretation of the contract, Mary challenges the means by which the question came to the court's attention. Mary contends that by advocating for the interests of the surviving spouse, George's application for directions "ran afoul of his fiduciary duty to administer the estate in the best interest of the only other beneficiary, Mary Ewoldt." Specifically, Mary charges that George engaged in self-dealing in violation of Iowa Code sections 633.155 and 633.160.

Executors act as fiduciaries and courts frequently refer to them as trustees for all interested parties. *In re Estate of Phoenix*, 493 N.W.2d 79, 81 (Iowa Ct. App. 1992). Fiduciaries are generally prohibited from engaging in self-dealing. Iowa Code § 633.155. "Self-dealing involves those situations in which a fiduciary personally profits from transactions between himself and the estate. . . ." *In re Estate of Snapp,* 502 N.W.2d 29, 33 (Iowa Ct. App. 1993).

In ruling on the application for directions, the probate court determined that George was among the "least interested parties regarding the distribution of the insurance proceeds." On appeal, Mary does not identify how George personally profited from the estate paying the insurance proceeds to Maxine. Accordingly, Mary is not able to show George's application for directions was a

faulty vehicle for posing the question whether the surviving spouse was entitled to the insurance proceeds.

Mary also asserts that Maxine was required to file a claim against the estate by July 18, 2010 under the deadlines set out in Iowa Code section 633.410(1). Because Maxine did not request the insurance proceeds, Mary argues she is now forever barred from doing so. Maxine counters that as the surviving spouse, she was not a creditor of the estate and she had no obligation to file a claim. She further contends that under Iowa Code section 633.435 the personal representative of the estate can pay any valid debts even though no claim has been filed. We believe Maxine has the better argument. Because the co-executor's application for directions properly placed the question of the insurance-proceeds transfer before the probate court, Maxine did not have an obligation to separately seek payment of the estate's debt created by the premarital agreement. *See generally Elliott v. Des Moines Nat'l Bank*, 209 Iowa 1258, 1262, 228 N.W. 274, 276 (1929) (filing of claim with estate is not condition precedent to authority of the administrator to approve and pay it).

Mary also draws our attention to Iowa Code section 633.333, which provides as follows:

> The avails of any life or accident insurance, or other sum of money made payable to the decedent's estate by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the decedent, except by contract or by express provision in the will, and shall be disposed of like other property left by the decedent.

She asserts that because Justin's will did not mention the life insurance policy, the question is whether any contract existed under which the "avails of the life

insurance" would be subject to the "debt" that Justin allegedly owed to Maxine. We find that the couple's premarital agreement was a contract, triggered the exception to this statute and subjected the proceeds of the life insurance policy to Justin's debt to Maxine. *See Nolte v. Nolte*, 247 Iowa 868, 874, 76 N.W.2d 881, 885 (1956) (recognizing that testator may "make the proceeds of life policies payable to his estate, subject to his debts").

Finally, we address Mary's contention George failed to demonstrate that transferring the insurance proceeds to Maxine was in the "best interests of the estate" as that phrase is used in section 633.76. Mary contends payment of the proceeds to a surviving spouse who was not named as a beneficiary of the will and who waived her rights under the premarital agreement would diminish the assets of the estate and be contrary to its best interests. Maxine responds that it was in the best interests of Justin's estate to fulfill his desire to pay the insurance proceeds to her.

Our case law does not spell out what constitutes the best interest of an estate as that phrase is used in section 633.76. In the context of awarding extraordinary attorney fees, our supreme court has held that "an action benefits an estate if it involves increasing or preserving the size of the estate." *In re Estate of Wulf*, 526 N.W.2d 154, 157 (Iowa 1994). But an action may also benefit an estate if it represents the decedent's desires and intents as expressed in the will. *Id.* In this case, the probate court divined the decedent's intent not from his expressions in the will, but from the terms of the premarital agreement. On the question of best interests, the probate court concluded: "this is the estate

of *Justin Thompson*, and the best interest of the estate relate to his actions and desires before his death."

Our general law on estates provides that the "testator's intent is the polestar and must prevail." *In re Estate of Redenius*, 455 N.W.2d 295, 297 (Iowa Ct. App. 1990). We do not see any impediment to applying that maxim both in the context of interpreting the will itself, and when interpreting a separate, but related contract entered into by the decedent. We conclude—as did the probate court—that the best interests of Justin's estate can be determined in this case from his wishes for Maxine to receive the life insurance proceeds, as expressed in the premarital agreement.

B. Did the Probate Court Abuse its Discretion in Granting Maxine a Spousal Allowance?

In her second assignment of error, Mary contests the probate court's reversal of its original ruling denying Maxine's request for spousal support under section 633.374. That statute provides, in pertinent part:

> The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. . . . The court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate.

Iowa Code § 633.374.

Maxine filed an application for support on April 26, 2010. She alleged that her monthly expenses totaled $3361 and asked for an allowance of $3000 per month. Mary responded with a motion to compel discovery and motion to

continue, alleging the estate's ability to respond to the support application was compromised by a lack of documentation of Maxine's expenses. The district court denied the continuance and went forward with a hearing on June 25, 2010. Maxine was the only witness at the hearing.

In its October 8, 2010 ruling, the court denied Maxine's application. The court noted Mary's position that Maxine's request for $3000 was "greatly inflated" and should be reduced to $305 per month. In finding that a spousal allowance was "not needed," the court pointed to Maxine's monthly income of $945 from Social Security and her IRA, as well as a "sizeable" bank account of $30,000 jointly held with her husband until his death. The court further stated: "she will additionally receive a $100,000 life insurance policy." The court also considered the premarital agreement in which Maxine waived her right to a "widow's allowance."

Maxine asked the court to reconsider its ruling on spousal support if it decided to modify its ruling concerning the insurance proceeds, contending "one Ruling was contingent on the other Ruling." After Mary's attempted appeal from the insurance ruling, on May 11, 2011, the court granted Maxine's motion to reconsider, finding that an award of $1000 per month for twelve months was appropriate. The court reasoned that its previous ruling had "assumed that Maxine would shortly receive over $100,000 from Justin Thompson's life insurance proceeds," but more than one year had passed and the litigation was still ongoing.

In this appeal, Mary argues the probate court should not have changed its ruling because Maxine waived the spousal allowance by signing the premarital agreement and because Maxine's request for the court to reconsider the spousal allowance was contingent on the court modifying its ruling on the insurance proceeds. Mary charges that the court's reconsideration essentially punished her for appealing the insurance issue. Mary also complains about "irregularities" in the court's procedural handling of the spousal allowance issue. Specifically, Mary alleges the court improperly denied her motion to compel discovery and refused to allow her sufficient time to present her side of the issue at the June 25, 2010 hearing. As an initial matter, we do not find that Mary was substantially prejudiced by the procedural rulings of the probate court.

We focus our analysis on the reason the legislature created a statutory right to a spousal allowance. The purpose of an award under section 633.374 is "to provide for daily necessities of a surviving spouse during the period of readjustment" following the death of his or her partner until such time as final settlement or award is accomplished. *In re Estate of Allen*, 239 N.W.2d 163, 170–71 (Iowa 1976). The surviving spouse does not need to show a necessity to receive a spousal award. *Sieh*, 745 N.W.2d at 480. But the probate court should consider the assets of the surviving spouse when considering his or her "station in life" and should also take into account the assets and condition of the estate. *Spurgeon*, 572 N.W.2d at 599. To find an abuse of discretion, we must detect no basis in the record for the probate court's decision to award $1000 per month in spousal support for one year. *See id*.

The probate court had discretion to provide an allowance to the surviving spouse regardless of the contrary term in the premarital agreement. *See id.* We hesitate to find an abuse of discretion under the instant circumstances. *See In re Estate of Chesmore*, 194 Iowa 300, 308, 189 N.W. 770, 774 (1922) (describing "very wide discretion [ ] vested in the lower court in the manner of allowances of this character"). The court initially considered Maxine's receipt of the insurance proceeds in deciding that the surviving spouse had sufficient funds to make the financial adjustment following Justin's death. When those funds were not forthcoming because of the ongoing litigation, the court changed its mind. We do not find that the revised ruling constitutes an abuse of discretion.

AFFIRMED.

Vaitheswaran, P.J., concurs; Mullins, J., dissents in part.

MULLINS, J. (concurs in part and dissents in part)

I concur in the decision to affirm the spousal support order, but for reasons stated below respectfully dissent as to the transfer of the life insurance proceeds.

"[P]renuptial agreements are entitled to the same consideration and construction as other contracts." *In re Marriage of Spiegel*, 553 N.W.2d 309, 313 (Iowa 1996).

> Generally, contracts are interpreted based on the language within the four corners of the document. *See Smidt v. Porter,* 695 N.W.2d 9, 21 (Iowa 2005) ("It is a fundamental and well-settled rule that when a contract is not ambiguous, we must simply interpret it as written." (citing *State Pub. Defender v. Iowa Dist. Ct.,* 594 N.W.2d 34, 37 (Iowa 1999); *Rogers v. Md. Cas. Co.,* 252 Iowa 1096, 1098-99, 109 N.W.2d 435, 437 (1961))).

Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc., 714 N.W.2d 603, 615 (Iowa 2006).

"[A] contract is not ambiguous merely because the parties disagree over its meaning. Instead, an ambiguity occurs in a contract when a genuine uncertainty exists concerning which of two reasonable interpretations is proper." *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 797 (Iowa 1999) (citations omitted). "If the contract is ambiguous and uncertain, extrinsic evidence can be considered to help determine the intent." *Id*. "The existence of an ambiguity, however, can be determined only after all pertinent rules of interpretation have been considered." *Id*.

> In interpreting contracts, we give effect to the language of the entire contract according to its commonly accepted and ordinary meaning. *Magina v. Bartlett*, 582 N.W.2d 159, 163 (Iowa 1998). Moreover, particular words and phrases are not interpreted in isolation. *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 863 (Iowa 1991). Instead, they are

> interpreted in a context in which they are used. *Home Fed. Sav. & Loan Ass'n v. Campney*, 357 N.W.2d 613, 617 (Iowa 1984).

Hartig Drug, 602 N.W.2d at 797-98.

An examination of each numbered paragraph of the premarital agreement shows that each paragraph addresses a particular subject, respectively as follows: (1) intent to bind; (2) acknowledgement of IUPAA on spousal support; (3) legal representation; (4) disclosures; (5) retention of title, management and control of property; (6) retention of rights to distribute or dispose of property; (7) agreement to make no claim against property of the other; (8) estate to descend to heirs at law or by will; (9) neither required to pay support to the other; (10) retirement accounts are non-marital property and belong to the owner; (11) disposition of jointly owned property; (12) no prohibition from transferring, gifting, devising or bequeathing to the other party; (13) severability clause; (14) filing tax returns; (15) amendment, modification or revocation; (16) consideration; (17) effective only on marriage; and (18) Iowa law applies. The agreement itself is well organized, easy to read, and easily understood. The structure of the agreement provides clear context for the topic undertaken in each numbered paragraph. There is no ambiguity.

Paragraphs 5, 6, 10, and 12 plainly and concisely provide that each party retains all rights with respect to their individual property; and paragraph 8 makes it clear that the estate of each will be distributed to heirs at law or by the terms of a will. Any of paragraphs 5, 6, 8, 10, and/or 12, could have easily required Justin to make some financial provision for the benefit of Maxine, but none of them did.

Attached to the agreement are two exhibits: Exhibit "A" entitled "Assets of Justin F. Thompson," and Exhibit "B" entitled "Assets of Maxine Thompson." The express language of paragraph 4 of the agreement incorporates by reference those specific exhibits and identifies the purpose and general content of the disclosures made in the exhibits. Exhibit "A" lists seven categories of assets, the first six of which provide: real estate is shown by legal description with a value for each tract; farm machinery is shown as a lump sum value; grain on hand and growing crops are separately valued; an amount is shown for bank deposits; five vehicles are listed and valued; and household goods and personal effects are given a lump sum value. The seventh and last item reads as follows:

> G. Life insurance—Midland Life Insurance Co.—cash value $15,000.00*
>
> *$100,000.00 face value, now payable to Maxine Thompson

The terms of the said Exhibit "A" and paragraph 4 of the agreement are clear; the meaning of the words is clear. There is nothing inherently confusing or ambiguous in the terms and phrases in Exhibit "A" attached to the agreement, nor in paragraph 4 of the agreement. By the express terms of the last sentence of paragraph 4 (quoted in the majority opinion), the context of the exhibits relates only to paragraph 4 of the agreement. The subject matter of paragraph 4 is disclosure, and all of the words and phrases are clearly understood; it contains no ambiguity, as it clearly relates to disclosures—no more, no less. "[A] contract is not ambiguous merely because the parties disagree over its meaning." *Id*. at 797.

The life insurance disclosure contained on Exhibit "A" attached to paragraph 4 was not correct. At the time of the execution of the agreement, the

policy was not "now payable to Maxine Thompson." Maxine, the trial court, and now the majority use that mistake in the disclosure exhibit (that was not discovered by Maxine until after Justin's death—we do not know whether Justin discovered it before his death) to conclude that the parties intended that Justin be obligated to irrevocably name Maxine as the beneficiary, and that the location of that obligation in the exhibit rendered the premarital agreement ambiguous, thus allowing extrinsic evidence. The problem with the analysis is that extrinsic evidence was in fact used to create the ambiguity, and then was used to resolve the ambiguity.

In the case of *In re Marriage of Shanks*, the Iowa Supreme Court explained the statutory framework for challenges to enforcement of a premarital agreement:

> In Iowa, premarital agreements executed on or after January 1, 1992, are subject to the requirements of the Iowa Uniform Premarital Agreement Act (IUPAA), codified in Iowa Code chapter 596. Iowa Code § 596.12. The IUPAA provides three independent bases for finding a premarital agreement unenforceable:
>
> > A premarital agreement is not enforceable if the person against whom enforcement is sought proves any of the following:
> >
> > (1) The person did not execute the agreement voluntarily.
> >
> > (2) The agreement was unconscionable when it was executed.
> >
> > (3) Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other spouse. . . .
>
> *Id*. § 596.8. The IUPAA is modeled after the Uniform Premarital Agreement Act (UPAA), which was drafted by the National Conference of Commissioners on Uniform State Laws in 1983.

> See Unif. Premarital Agreement Act, 9B U.L.A. 369 (1983). A primary goal of the UPAA was to increase the certainty of enforceability of premarital agreements. *See id*. Prefatory Note at 369. In the absence of instructive Iowa legislative history, we look to the comments and statements of purpose contained in the Uniform Act to guide our interpretation of the comparable provisions of the IUPAA.

758 N.W.2d 506, 511-12 (Iowa 2008).

The court elaborated on the disclosure requirements as follows:

> Section 596.8(3) requires only "fair and reasonable" disclosure, or that the party could have had "adequate knowledge" of the other party's property and financial obligations. This statutory standard is consistent with Iowa law extant at the time of the adoption of the IUPAA. *See Spiegel*, 553 N.W.2d at 317 ("We have never required that a party have precise valuations of the other's assets; a general knowledge of the true nature and extent of the other's properties is sufficient.").

Shanks, 758 N.W.2d at 519.

Although not required in Iowa, it has been said that "[t]he best device for proving disclosure is to attach schedules of assets and income to the agreement itself." Judith T. Younger, *Perspectives on Antenuptial Agreements: An Update*, 8 J. Am. Acad. of Matrimonial Law. 1, 26-27 (1992).[2]

[2] The article cites to the following cases for support: *Hartz v. Hartz*, 234 A.2d 865, 871 n.3 (Md. 1967) ("The careful practitioner has often caused to be prepared an itemization of the property covered by the agreement with appraised values and caused it to be made part of the agreement."); *Roberts v. Estate of Roberts*, 664 S.W.2d 634, 637 (Mo. Ct. App. 1984) ("preferable to recite in the agreement all property owned by both parties . . . [but] failure to do so is not fatal. . . ."); *Gross v. Gross*, 464 N.E.2d 500, 510 (Ohio 1984) (requirement satisfied either by attaching a list of the assets of the parties or a showing that there had been full disclosure by other means); *see also DeLorean v. DeLorean*, 511 A.2d 1257, 1260 (N.J. Super. Ct. Ch. Div. 1986); *Marschall v. Marschall*, 477 A.2d 833, 842 (N.J. Super. Ct. Ch. Div. 1984). *But see Hengel v. Hengel*, 365 N.W.2d 16, 20 (Wis. Ct. App. 1985) (court rejected wife's complaint that no financial statements were attached to the agreement saying that neither statute nor case law imposed that requirement).

In the present case, attachments were used to make disclosures. Those attachments were referenced and incorporated into paragraph 4 of the premarital agreement, the paragraph devoted to acknowledging that the parties had made the disclosures contemplated by the IUPAA. As such, the parties had followed the practice recommended for showing an effort to comply with Iowa Code section 596.8. *See id*.[3]

The remedy for failure to make a fair and reasonable disclosure is for the person against whom enforcement is sought to challenge the enforceability. Iowa Code § 596.8. That is, if Maxine believed that Justin had not made a fair and reasonable disclosure of his property and financial obligations as a result of the mistake in his disclosure concerning the life insurance, then she had available the remedy to challenge the enforcement of the premarital agreement as it related to denying her certain spousal rights in the probate proceedings.

The majority has relied on extrinsic evidence to conclude that a statement (that was not factually correct) contained in the disclosure provisions of paragraph 4 of the agreement was intended by the parties to create an affirmative obligation for Justin to name Maxine as a beneficiary, thus modifying the express terms of one or more of the several subsequent paragraphs of the agreement. Once having determined what they believe to be the intent of the

[3] The incorporation by reference of the exhibits into the terms of paragraph 4 creates no ambiguity; the use of that approach to addressing the details of disclosure of assets is an efficient drafting tool frequently used by lawyers. As one can determine by reading the agreement in question and examining the exhibits, the basic terms of the agreement are easily read and understood, and the disclosures are neatly and separately organized on the exhibits. (Such use of attached exhibits are common in the legal profession when lawyers use forms or formed language in the body of a contract or other legal document to which they can easily attach details that might be laborious, detailed, difficult to read, or might require edits or updates.)

parties, they are then able to declare that the express terms of the agreement do not comport with that intent, or perhaps more precisely that Justin's conduct did not comport with what they have decided was his intent. If that approach becomes a new rule of interpretation for contracts in Iowa, then there will no longer be limits on the use of extrinsic evidence as every contract dispute will hinge not on the express words of the agreement, but on what the parties are later permitted to say they intended at the time they signed the document, which did not really memorialize what was agreed. Written contracts must be given force as they are written or there will no longer be a benefit or purpose for written contracts. We should not disregard the expression that "an oral contract is worth no more than the paper it is written on."

Notwithstanding the foregoing, I will address another scenario in an effort to illustrate the problem with the majority opinion. Even if the disclosure in Exhibit "A" concerning naming Maxine as beneficiary of the life insurance policy were in fact correct at the time of the execution of the agreement, it would have amounted to no more than a disclosure that one of his assets—the life insurance policy—at the time of the execution of the agreement named Maxine as beneficiary. There is absolutely nothing in the unambiguous terms, phrases, or context of the agreement that obligated him to leave her as the named beneficiary. In fact, the express terms of the agreement provide that he would remain the owner of the life insurance policy (paragraph 5 of the agreement), and he retained all control over disposition of that policy (paragraph 6), and that at death all of his property would be distributed to heirs at law or by the terms of his

will (paragraph 8). I disagree with the majority's approval of the use of extrinsic evidence to conclude that Justin's mistaken representation or disclosure in Exhibit "A" to paragraph 4 obligated him to affirmatively name Maxine as beneficiary and that it also eliminated his rights retained in all the remaining paragraphs of the agreement.

So, even if the mistake of fact were not incorrect, and Maxine had been named the beneficiary at the time of the execution of the agreement, the terms of the agreement do not require the result reached by the majority.

The premarital agreement could have so easily expressly obligated Justin to name Maxine as beneficiary of his life insurance policy, and could have expressly obligated him to leave her as the named beneficiary until his death. It did neither.

Justin could have easily changed the life insurance beneficiary designation to name Maxine, with or without premarital agreement obligations. He did not.

Justin could have by his last will and testament guaranteed that Maxine get the $100,000 life insurance proceeds. He did not.

I would not rewrite the obligations of the parties. The best evidence of the intent of parties to a written agreement is the content of the written agreement. I would honor the applicable documents—premarital agreement, life insurance policy, last will and testament—as written.

Accordingly, I respectfully dissent from that part of the opinion that awards to Maxine the proceeds of the life insurance policy, and would reverse that portion of the decision of the trial court.