STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0489

In re the Estate of: Charles Arthur Harding, Decedent.

Filed November 18, 2013
Affirmed
Hooten, Judge

Blue Earth County District Court
File No. 07-PR-11-4372

DeAnne L. Dulas, Neut L. Strandemo, Eagan, Minnesota (for appellant Mardell Harding)

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Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant challenges the district court's summary-judgment decision enforcing her antenuptial agreement, in which she conditionally waived her right to a share of her late husband's estate. Appellant argues that her conditional waiver was voided by both her and decedent's breach of the agreement. Because appellant failed to offer evidence sufficient to establish her breach-of-contract claim, we affirm.

FACTS

Appellant Mardell Iva Harding is the surviving spouse of decedent Charles Arthur Harding. Respondent Charles Allen Harding is decedent's adult son from an earlier marriage. Appellant and decedent entered into an Antenuptial Agreement and married in May 1991. Article III of the Agreement provided:

> Each party waives, discharges, and releases any and all claims and rights that he or she may acquire by reason of the marriage to share in the estate of the other party upon the latter's death by way of . . . distribution in intestacy; and, . . . to act as executor or administrator of the other party's estate.

Appellant and decedent also agreed to undertake certain responsibilities during the marriage under article IV. If "any of the parties . . . fail to carry out the provisions of this agreement," article VIII renders article III "null and void."

Decedent died on April 18, 2011. Appellant filed a petition for formal adjudication of intestacy, determination of heirs, and appointment of a personal representative. Respondent objected on the grounds that decedent's last will and testament devised nothing to appellant. Appellant then filed a petition for family maintenance and an elective share. Respondent objected on the grounds that appellant waived her right to an elective share under the agreement.

Both parties moved for summary judgment. Appellant argued that her conditional waiver was voided by both her and decedent's breach of the agreement. The district court granted summary judgment in favor of respondent, reasoning that the evidence was insufficient to establish appellant's breach-of-contract claim. Subsequently, appellant moved for amended findings, which the district court denied. This appeal follows.

D E C I S I O N

I.

Appellant first argues that the district court erred in granting summary judgment in favor of respondent because it misinterpreted the agreement and the evidence was sufficient to establish that articles IV(a), IV(b), and IV(d) of the agreement were violated, thus voiding appellant's conditional waiver of an elective share. We disagree.

"We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). "We view the evidence in the light most favorable to the party against whom judgment was granted." *In re Estate of Kinney*, 733 N.W.2d 118, 122 (Minn. 2007).

"An antenuptial agreement is a type of contract recognized and favored at common law." *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998), *review denied* (Minn. May 28, 1998). "Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011). "When the intent of the parties can be determined from the writing of the contract, the construction of the instrument is a question of law for the court to resolve, and this court need not defer to the district court's findings." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 221 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Jan. 20, 2004).

"In a breach of contract action, [plaintiff] has the burden of proving . . . breach." *D.H. Blattner & Sons, Inc. v. Firemen's Ins. Co. of Newark*, 535 N.W.2d 671, 675 (Minn. App. 1995), *review denied* (Minn. Oct. 18, 1995). To survive summary judgment, the nonmoving party must offer "substantial evidence" to "establish that there is a genuine issue of material fact." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008). "Mere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993). Evidence offered to support or defeat a motion for summary judgment must be admissible at trial. *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991).

Article IV(a)

Article IV(a) of the agreement provides: "[t]he husband and wife agree that all household items purchased during the marriage will pass to the survivor of them pursuant to a last will and testament." Decedent executed a Last Will and Testament of Charles Arthur Harding on March 4, 1999, which stated in relevant part:

> FIFTH: It is my intention to prepare and leave with my personal effects a written statement either in my handwriting and/or signed by me, describing certain items of my tangible personal property . . . and listing the devisees of the same. If . . . I do not prepare a memorandum, then my personal effects shall be disposed of pursuant to the Sixth Article . . . .
>
> SIXTH: All of the rest, residue, and remainder of my estate, . . . I give and devise to the then acting Trustee, . . . to be held, administered, and distributed . . . under the terms and conditions of THE CHARLES HARDING REVOCABLE LIVING TRUST . . . .

The parties agree that decedent never prepared a written statement describing his personal property, that his Will did not devise any household items to appellant, and that The Charles Harding Revocable Living Trust did not specifically identify the household items and named only decedent's heirs as beneficiaries under the residual clause. Thus, appellant argues that decedent violated article IV(a) of the agreement because decedent's heirs received ownership of the household items pursuant to decedent's will and trust.

The district court concluded, however, that because decedent stated in his will that he intended to devise only "property over which he had the power of testamentary disposition," and the household items were held in joint tenancy with a right of survivorship, title to the items automatically transferred to appellant upon decedent's death. Therefore, decedent did not fail to pass the items to appellant "pursuant to a last will and testament" when he had no right to devise them upon his death.

On appeal, appellant argues that the district court erred in interpreting the agreement to include a right of survivorship. Further, appellant argues that even if she already owns the household items either as a result of her right of survivorship or respondent's concession of her ownership of the household items,[1] decedent still violated article IV(a) because she did not receive ownership "pursuant to [decedent's] last will and testament."

In responding to appellant's argument, we, like the district court, construe the agreement and will together because the agreement expressly references the will. In so

[1] The parties agree that all of the household items are currently in the possession of appellant. Respondent concedes that he is not contesting appellant's ownership of the household items.

doing, we agree with the district court that the will limited decedent's obligation under the agreement to transfer only those household items over which he exercised testamentary power. However, we do not find support in the record for the district court's determination that all of the household items were held in joint tenancy and automatically transferred to appellant upon decedent's death. It is well settled that "[c]ourts will presume that property is not held in joint tenancy unless evidence or words of transfer affirmatively indicate otherwise." *Farmers Sec. State Bank of Zumbrota v. Voegele*, 386 N.W.2d 760, 762 (Minn. App. 1986). A defining feature of a joint tenancy is the right of survivorship, meaning that "joint tenancy interests pass to the surviving joint tenant at and because of a joint tenant's death." *In re Estate of Grote*, 766 N.W.2d 82, 87 (Minn. App. 2009). Because neither the agreement nor the will contains any language supporting a right of joint tenancy or survivorship in the household items, we cannot base such right upon either document.

The district court also found that appellant and decedent owned the household items together because "each contributed their social security checks to [a joint checking] account and used it for household items purchased during the marriage." But the parties agree that the evidence is silent on whether any household items were in fact purchased with funds from this joint account and on whether decedent ever acquired any household items over which he exercised testamentary power during the marriage. Indeed, appellant's principal brief admits:

> The record does not identify all items of household goods purchased during the marriage. The record does not illustrate how, when, or by whom each item of household goods was

> acquired. The record does not reflect how each household item was purchased or from which account the funds were drawn.

As the party alleging a breach-of-contract claim, appellant had the burden at the summary-judgment stage to offer evidence sufficient to establish that decedent breached the agreement, which must include evidence that decedent owned household items during the marriage over which he exercised testamentary power. Absent this showing, and under these circumstances, there is simply no evidence that decedent failed to devise to appellant any household items to which she was entitled under article IV(a). Given this absence, we conclude that the district court correctly granted summary judgment relative to this issue in favor of respondent.

Articles IV(b) and IV(d)

Appellant also argues that the district erred in granting summary judgment in favor of respondent because the evidence was sufficient to establish that Articles IV(b) and (d) of the Agreement were violated. Article IV(b) provided:

> Husband and wife will contribute each of their social security checks to the marriage expenses to be used by them to run their household. Household expenses to be paid out of said account include but are not limited to food, utilities, household goods, and maintenance of the household of the parties.

Article IV(d) provided: "The husband and wife agree that each will pay their own medical expenses and nursing home expenses and hold the other harmless for such expenses." Appellant argues that decedent violated both articles IV(b) and IV(d) on the basis that their social security funds, deposited into the joint household expenses account,

were used to pay for both appellant and decedent's medical expenses.

The district court concluded, however, that the definition of "[h]ousehold expenses" in article IV(b) is open-ended; therefore, funds from the joint checking account were allowed to be used for medical expenses. The district court also determined that "there is nothing in [article IV(b)] that prevent[ed] the parties from using any remaining moneys in the joint account after providing for the needs of the household." With respect to article IV(d), the district court determined that it prevented one spouse from having the duty to pay for the medical expenses of the other, but did not prevent one spouse from voluntarily paying the medical expenses of the other. Because we conclude that the evidence is insufficient to establish appellant's breach-of-contract claim on the basis of articles IV(b) and (d), the district court correctly granted summary judgment in favor of respondent.

In interpreting articles IV(b) and (d), we are guided by the maxim that "[a] contract must be interpreted in a way that gives all of its provisions meaning." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). Thus, there is some merit to appellant's argument that in order to give effect to both provisions, the household expenses account referenced in article IV(b) cannot include medical expenses, which, under article IV(d) were to be paid from each spouse's own funds. Under the maxim of expressio unius est exclusio alterius, "the expression of specific things in a contract implies the exclusion of all not expressed." *Maher v. All Nation Ins. Co.*, 340 N.W.2d 675, 680 (Minn. App. 1983) (holding that a pickup truck is not within the plain meaning of the contract term "passenger or station wagon type automobile"), *review*

denied (Minn. Apr. 25, 1984); *see also Am. Nat'l Bank of Minn. v. Hous. & Redevelopment Auth. for the City of Brainerd*, 773 N.W.2d 333, 338 (Minn. App. 2009) (holding that, when a bond transcript identifies only one source of repayment, the unambiguous language of the contract precluded any other source of repayment). Here, by expressing that social security funds were "to be used by them to run their household," appellant and decedent impliedly excluded other ways that the funds were to be used and intended that their medical expenses were to be paid from their own funds.

However, we disagree with appellant that evidence of decedent's alleged breach of articles IV(b) and (d) was sufficient to withstand respondent's summary-judgment motion. Appellant wrote all but one of the 1,574 checks that are part of the record.[2] Decedent wrote just one check on October 30, 2008 to an individual for $30. Significantly, nothing in the record supports, and appellant cannot argue, that decedent wrote that one check for a non-household expense. Although it is also undisputed that the checks written by appellant included those written for decedent's medical expenses, appellant offers no evidence that decedent directed her to write these checks. In fact, as appellant admitted in her brief, "there is absolutely no evidence in the record to support a finding that [a]ppellant and [d]ecedent voluntarily agreed to pay their [medical] expenses" with funds from the joint account. As the party claiming a breach of contract at the summary-judgment stage, the burden of proof is on appellant to "make a showing sufficient to establish [the] essential element" of breach. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997); *see also D.H. Blattner & Sons, Inc.*, 535 N.W.2d at 675

[2] The checks were written between June 30, 2004 and February 27, 2011.

(holding that plaintiff has the burden of proving breach). Appellant fails to meet this burden without anything in the record to support that decedent wrote the checks himself or directed appellant to write the checks.

Appellant argues that evidence of her writing the checks for medical expenses is sufficient to establish her breach-of-contract claim because article IV(d) imposed an affirmative duty on decedent to prevent appellant from paying his "own medical expenses," and because appellant's waiver of an elective share is voided if "any of the parties" breach the agreement. Respondent argues that appellant cannot benefit from her own breaching conduct but admits that this argument was not raised before the district court.

As a general rule, a party may not raise new issues for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). This rule, however, is not "ironclad." *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (quotation omitted). We have "the authority to take any action as the interest of justice may require." *See id.* (quotation omitted) (citing Minn. R. Civ. App. P. 103.04). A "well-established" exception to the general rule allows us to consider an issue when it is plainly decisive of the entire controversy and the lack of a district court ruling causes no possible advantage or disadvantage to either party, which is the case when the facts are undisputed. *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997) (quotation omitted).

Here, because we conclude that the evidence was insufficient to show that decedent violated the agreement, whether appellant's own breach is sufficient to void her waiver of an elective share is decisive of whether she has summited evidence sufficient to

withstand summary judgment. And because the facts are undisputed and cannot be further developed, the lack of a district court ruling caused no possible advantage or disadvantage to either party. Indeed, as the district court noted in its order denying appellant's request for amended findings:

> The fact of the matter is that the two lawyers that drafted the Antenuptial Agreement died, the Decedent died, and [appellant]'s memory has faded significantly. The attorneys in this matter have done an exemplary job of providing the Court with what record there is and the holes in the record are not going to be filled by having a trial on this matter.

Accordingly, in the interest of justice and as an exception to the general rule, we will consider the issue of whether appellant may benefit from her own breach.

We are not persuaded that appellant's own breach entitles her to an elective share. "A rule in the law of contracts is that a party cannot raise to its advantage a breach of contract against another party when it has first breached the contract itself." *MTS Co. v. Taiga Corp.*, 365 N.W.2d 321, 327 (Minn. App. 1985), *review denied* (Minn. June 14, 1985). Appellant, therefore, cannot benefit from her own breaching conduct even if the agreement provided that the breach of "any of the parties" would void the elective-share waiver. A contrary interpretation would render the entire agreement meaningless and absurd if appellant could intentionally escape her promise to refuse an elective share by simply writing one check for her own non-household expense. Accordingly, evidence of appellant's breach is insufficient to establish her breach-of-contract claim, and we affirm the district court's grant of summary judgment in favor of respondent.

Procedural and Substantive Unfairness

In the alternative, appellant argues that the agreement should not be enforced on the basis of procedural and substantive unfairness.

As a threshold matter, these arguments are not properly before this court. On appeal, principal briefs are limited to 45 pages unless a party shows good cause with permission of the appellate court or certifies that the brief complies with an alternative measure of length by word or line count. Minn. R. Civ. App. P. 132.01, subd. 3. Appellant's attorney filed a 52-page principal brief, did not attempt to show good cause with permission from the court, and did not certify that the brief complies with one of the alternative measures of length. Therefore, arguments presented beyond the 45-page limit are not properly before this court, including substantially all of appellant's arguments on procedural and substantive unfairness. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived).

Even if we were to entertain appellant's unfairness arguments, they are meritless. "Substantive fairness guards against misrepresentation, overreaching and unconscionability." *Pollock-Halvarson*, 576 N.W.2d at 455. Appellant does not allege any of these types of unfairness, but instead argues that the district court's interpretation of the agreement altered it "in a way that could not have been anticipated at the time she entered into" it. But by agreeing to article III, she fully anticipated the possibility of losing her elective share.

"Procedural fairness is satisfied in an antenuptial agreement if (a) the parties have made full and fair financial disclosures to each other, and (b) each has had an opportunity

to obtain independent legal advice respecting the agreement." *Id.* at 456. Appellant offers no evidence that she lacked the opportunity to obtain independent legal advice. But she asserts that she might not have signed the agreement if she had discussed with her attorney the district court's potential interpretation. Appellant's mere disagreement with the district court cannot be the basis of a meritorious claim of procedural unfairness.

II.

Appellant next argues that the district court erred in denying her motion for amended findings. The district court's decision to deny a motion for amended findings is reviewed for an abuse of discretion. *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 177–78 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). A motion for amended findings that does no more than reargue a prior motion is really an improper motion to reconsider. *Lewis v. Lewis*, 572 N.W.2d 313, 315 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998).[3]

Appellant's only argument on this issue is that the district court erroneously treated her motion for amended findings as an improper motion for reconsideration by requiring "new evidence" from her. But this argument is not properly before this court because it was presented on pages beyond the 45-page limit. *See* Minn. R. Civ. App. P. 132.01, subd. 3. Moreover, the argument lacks merit because neither the district court's order denying appellant's motion nor the transcript of the hearing indicated that the

[3] *Lewis* has been overruled insofar as it suggests "that the merits of a motion for amended findings bear on whether an appeal time is tolled." *State by Fort Snelling State Park Ass'n*, 673 N.W.2d at 178 n.1. However, its "articulation of the components of a motion for amended findings" remains good law. *Id.*

district court demanded any new evidence. The district court simply did not want appellant to reiterate her arguments from the summary-judgment motion.

Affirmed.