STATE OF MINNESOTA
IN COURT OF APPEALS
A09-379

In re the Marriage of:

Richard Lee Marnach, petitioner,
Appellant,

vs.

Amy Lynn Marnach,
Respondent.

Filed December 8, 2009
Affirmed
Shumaker, Judge
Concurring specially, Lansing, Judge

Washington County District Court
File Nos. 82-F2-05-006725, 27-CV-07-18698

David F. Herr, Dawn C. Van Tassel, Haley N. Schaffer, Maslon Edleman Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4140; and

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Considered and decided by Hudson, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

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

SHUMAKER, Judge

Appellant-husband alleges that the district court erred in finding the antenuptial agreement that he prepared to be procedurally and substantively fair. Respondent-wife challenges the court's denial of a monetary award to which she claims to be entitled under the terms of the agreement. Because the district court's findings were not clearly erroneous and because the antenuptial agreement is valid and legally enforceable, we affirm.

FACTS

The parties to this appeal entered into an antenuptial agreement, married the next day, and dissolved the marriage 13 months later. When respondent-wife sought to enforce the antenuptial agreement, appellant-husband resisted, arguing that it was procedurally and substantively unfair and thus unenforceable. After a bifurcated trial, the district court upheld the agreement. Both parties challenge the court's interpretation of the agreement.

Appellant Richard L. Marnach, a pediatric anesthesiologist, and respondent Amy L. Marnach, a registered nurse, started dating in 1994. In the summer of 1995, Amy Marnach and her child from a previous marriage began living with Dr. Marnach, and the parties married on January 17, 1996. Their first child was born on December 13, 1996.

The parties' relationship was strained, and they dissolved their marriage in March 2000. But by April 2000, they had begun to reconcile, and Amy Marnach and the children soon moved back to live with Dr. Marnach. In June, 2000, the parties were

considering remarriage and they enlisted the assistance of a marriage therapist. Amy Marnach frequently urged remarriage and Dr. Marnach said he would consider it but would want to have an antenuptial agreement. Dr. Marnach testified at trial that the reason for the agreement "was not an attempt to be unfair but it was an attempt to eliminate the contentiousness that happened the first time around," which he characterized as "extremely contentious. Very, very difficult."

The parties' second child was born on July 17, 2003. In that year, Dr. Marnach executed a will that left his property to Amy Marnach, and he obtained a draft of an antenuptial agreement. Amy Marnach rejected the agreement because she felt it did not give her sufficient financial security. The particulars of that agreement are not in the record.

When Amy Marnach became pregnant with the parties' third child in November 2004, she told Dr. Marnach that they would have to marry by the end of the year or she and the children would move out. She testified that she had religious and moral reasons for not wanting to continue living out of wedlock and that she "really didn't think that living together and having more and more children was proper."

Amy Marnach's concern with an antenuptial agreement was that she would receive a house, a car, and sufficient money for financial security, but she testified that she would have remarried Dr. Marnach even without an agreement.

One or two weeks before the end of the year, Dr. Marnach presented her with a proposed antenuptial agreement, saying, "I think you'll be happy with this." It was an agreement that his attorney had prepared at his request. Amy Marnach and her own

attorney reviewed the agreement and, on December 30, 2004, the parties executed and acknowledged the agreement, and their respective attorneys certified that they had fully advised their clients of its legal significance and consequences.

The antenuptial agreement purports to settle the parties' respective property rights during the marriage, upon the dissolution of the marriage, and at the death of either party. It also determines child custody and parenting issues.

Dr. Marnach challenges the enforceability of the agreement, contending that he was coerced into signing it and that it is void because Amy Marnach did not make a full and fair disclosure of her assets. He also challenges the district court's ruling that Amy Marnach is entitled to a home free and clear of the existing mortgage, which Dr. Marnach is obligated to pay. And Amy Marnach claims that the district court erred in ruling that she is not entitled to a cash award of $100,000 when the agreement arguably grants such an award if the parties remained married for at least a year.

D E C I S I O N

There are four issues in this appeal: (1) Was the antenuptial agreement the product of Amy Marnach's coercion of Dr. Marnach and therefore unenforceable? (2) Is the agreement void because Amy Marnach failed to fully and fairly disclose all of her assets? (3) Is the agreement substantively unfair because it resulted in a windfall to Amy Marnach after a short-term marriage, and did the district court err in ruling that she is entitled to a house free and clear of the mortgage against it? (4) Did the district court err in ruling that Amy Marnach is not entitled to a $100,000 cash award provided in the agreement on the condition that the parties remain married for at least one year?

Carefully and thoughtfully constructed antenuptial agreements foster certainty regarding various issues, including property rights and liabilities in the event of marriage dissolution. They can, and should, obviate disputes that might entangle the parties in acrimonious, protracted, and expensive litigation. As such, they were viewed favorably at common law and, in Minnesota, are sanctioned by statute. Minn. Stat. § 519.11 (2004); *McKee-Johnson v. Johnson*, 444 N.W.2d 259, 267 (Minn. 1989); *Hafner v. Hafner*, 295 N.W.2d 567, 571 (Minn. 1980).

To be valid and enforceable, an antenuptial agreement must be procedurally and substantively fair. *McKee-Johnson*, 444 N.W.2d at 265. An antenuptial agreement is deemed procedurally fair if the parties have made "a full and fair disclosure of the earnings and property of each" and "the parties have had an opportunity to consult with legal counsel of their own choice." Minn. Stat. § 519.11. "Substantive fairness guards against misrepresentation, overreaching and unconscionability." *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998), *review denied* (Minn. May 28, 1998).

A "duly acknowledged and attested" antenuptial agreement is "prima facie proof of the matters acknowledged therein and as to those matters, the burden of proof shall be and rest upon the person contesting the same." Minn. Stat. § 519.11, subd. 5. The Marnachs' antenuptial agreement was duly acknowledged and attested and Dr. Marnach, the party contesting the agreement, has the burden of proving its invalidity.

When an issue is tried to the court without a jury, as here, we must give deference to the trial court's opportunity to assess the credibility of the witnesses and we may not

set aside the court's findings unless they are clearly erroneous. *Estate of Serbus v. Serbus*, 324 N.W.2d 381, 384-85 (Minn. 1982). However, the ultimate issue of the validity of an antenuptial agreement is a legal question which we review de novo. *Pollock-Halvarson*, 576 N.W.2d at 454.

Alleged Coercion

Dr. Marnach argues that the antenuptial agreement was procedurally unfair because Amy Marnach coerced him into accepting her terms or she would take the children and leave. The district court found that the parties had "ample opportunity to consult with attorneys" and that they "freely contracted to a valid agreement."

Dr. Marnach contends that "the evidence established that the agreement's terms were dictated entirely by [Amy Marnach]. She received everything she asked for . . . ." This characterization of the evidence is not entirely accurate. The uncontroverted evidence shows that Amy Marnach simply wanted to remarry and to cease having children out of wedlock. The idea of an antenuptial agreement was entirely Dr. Marnach's. The unrebutted evidence is that Amy Marnach would have remarried Dr. Marnach without an antenuptial agreement but that, when he insisted on having one as a condition of remarriage, she then stated that the agreement would have to ensure that she would get a house, a car, and some money. Contrary to Dr. Marnach's assertion, the evidence shows that the particular terms of the agreement were dictated entirely by Dr. Marnach. In fact, when Amy Marnach's attorney suggested a change, Dr. Marnach's attorney refused, thereby implying that the agreement was not negotiable.

Although Dr. Marnach testified that he felt pressure to remarry by the deadline Amy Marnach set, any urgency to have an antenuptial agreement was self-induced. It does not strike us as overreaching that Amy Marnach might not have wanted to give birth to another of Dr. Marnach's children out of wedlock and that she would choose not to continue living with him as an unmarried woman. And it does not strike us as overreaching for Amy Marnach to insist that if there was going to be an antenuptial agreement it provide economic security for her and the children. Thus, with Amy Marnach's insistence only that a marriage occur before the end of the year and her indifference toward having an antenuptial agreement, Dr. Marnach chose to obtain an agreement, chose the specific terms to be included, and consulted fully with his own lawyer regarding those terms.

Dr. Marnach implies in his argument that a significant degree of coercion came from Amy Marnach's "arbitrary" deadline to be married. But the evidence shows that Amy Marnach consistently advocated to Dr. Marnach to get remarried, from the time she resumed living with him in 2000. Between that point and the deadline, three and one-half years had gone by; a second child had been born out of wedlock; Amy Marnach was pregnant with Dr. Marnach's third child; and Amy Marnach had repeated her threat "numerous times throughout the year 2004." It was not until a few weeks before the deadline that Dr. Marnach decided to obtain an antenuptial agreement.

The evidence does not support the proposition that Dr. Marnach was coerced into signing an antenuptial agreement, which was not a condition Amy Marnach imposed, and which in all particulars contained terms which Dr. Marnach dictated. Thus, the district

court did not clearly err when it stated that it did "not find that [Amy Marnach] used [Dr. Marnach's] emotional vulnerability to coerce him into signing the antenuptial agreement, as he was the one that requested it and he was the one who had it drafted."

Disclosure

Dr. Marnach argues that the antenuptial agreement was procedurally unfair, and thus unenforceable, because Amy Marnach did not make a "full and fair disclosure" of her assets as required by Minn. Stat. § 519.11.

The parties attached their respective disclosure statements as exhibits to the antenuptial agreement. The district court found that Amy Marnach omitted two of her assets: "Although two of [Amy Marnach's] accounts were omitted from the Disclosure Statement, there was full and accurate disclosure of each party's assets because [Dr. Marnach] knew about the accounts when [his] attorney drafted the Agreement." The evidence of Dr. Marnach's knowledge of the omitted assets came through Amy Marnach's testimony:

> A. We didn't put my savings account or my checking account and . . . I had a Vanguard Fund from before. When we were married before.
> Q. Did Dr. Marnach know of these funds?
> A. Yes, he did.

Dr. Marnach states that the district court relied on this "uncorroborated testimony" in finding that he knew of the omitted assets. We know of no requirement that a witness's testimony is reliable only if it is corroborated, and Dr. Marnach has cited no authority for such a proposition. *See Danielson v. Danielson*, 392 N.W.2d 570, 572 (Minn. App. 1986) (holding that oral testimony, if deemed credible, is sufficient to trace a

nonmarital claim); *see also Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987 (stating that a fact-finder "is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afforded reasonable grounds for doubting its credibility"); *see generally McCauley v. Michael*, 256 N.W.2d 491, 500 (Minn. 1977) (stating "a number of findings may be based upon a single piece of evidence or the testimony of a single witness"). Furthermore, Dr. Marnach neither objected to this evidence nor offered any rebuttal of it. Thus, the district court was entitled to rely on this sole and unrefuted evidence that Dr. Marnach did in fact know of the assets Amy Marnach failed to include in her disclosure.

The value of the omitted assets at the inception of the antenuptial agreement was $10,926.38. Dr. Marnach has chosen to ignore this amount and instead to select the value at the time of trial, namely $40,000, in urging that the omission was significant because it was "an amount that reflects more than [Amy Marnach] made in taxable income in any single year since she was employed . . ." and that an omission that great "deprived [Dr. Marnach] of full and fair disclosure . . . ." The district court characterized the omission as insignificant, finding that the "assets not listed for [Amy Marnach] would not have been a 'deal breaker' with regard to the antenuptial agreement, requiring provisions of the antenuptial agreement to be amended or deleted." This was the court's finding despite its error in thinking that the omission had a value of $40,000, a value that clearly did not exist when the parties entered the agreement.

Citing foreign authorities, Dr. Marnach argues that "other jurisdictions have interpreted full and fair disclosure to mean that each contracting party be given a clear

idea of the nature, extent, and value of the other party's property and resources." Although such authorities are not binding on us, it does not seem that Minnesota's interpretation would be materially to the contrary. But we must recognize that the controlling statute does not require any particular form of disclosure. Minn. Stat. § 519.11. We have noted that the term "full" cannot be taken literally:

> The statute requires a "full and fair disclosure." Minn. Stat. § 519.11, subd. 1 (1996). No case has held that the term "full" means literally every item of tangible or intangible property that a party has an ownership interest in. Such an interpretation would impose on contracting parties an intolerable burden and would foster the defeasibility of the contract for the most trivial omission. The legislature could not have intended such an unreasonable interpretation.

Pollock-Halvarson, 576 N.W.2d at 456.

We do not treat the omission of an asset worth almost $11,000 as trivial but the failure to expressly disclose it does not necessarily render the agreement invalid. The requisite disclosure is designed to impart knowledge. Such knowledge may be imparted expressly and in writing, obviously the most prudent way to do it. But if such knowledge already exists, the agreement will not necessarily fail because of nondisclosure. Of course, the proponent of the proposition that assets not expressly disclosed were nevertheless known by the other party risks a failure of proof of that knowledge. There was no failure of proof here because the unrebutted evidence demonstrated Dr. Marnach's knowledge of Amy Marnach's omitted assets.

We have found that nebulous evidence of the knowledge required to be imparted was not sufficient to satisfy the disclosure requirement. In *Rudbeck v. Rudbeck*, 365

N.W.2d 330, 333 (Minn. App. 1985), we rejected the contention that a woman knew of the extent of her husband's assets "because of all the 'stuff laying all over [his] desk.'" Dr. Marnach relies on this case in urging that he did not know that "[Amy Marnach] had stashed $40,000 in separate accounts." Of course, as noted above, there was not $40,000, and the evidence of Dr. Marnach's knowledge focused specifically on the omitted assets. We have held that a party's "general knowledge" of the other's financial condition coupled with the willingness to enter an agreement no matter what assets existed can be sufficient to satisfy the disclosure requirement. *Hill v. Hill*, 356 N.W.2d 49, 52-54 (Minn. App. 1984).

Dr. Marnach had the burden of proving that the antenuptial agreement he and Amy Marnach entered was procedurally unfair. He failed to carry that burden, and we hold that the district court did not err in determining that the agreement was procedurally fair.

Substantive Fairness

Dr. Marnach bluntly states his argument that the agreement is substantively unfair as follows: "In light of the short duration of the marriage, [Amy Marnach's] apparent intent to secure her financial future then flee, and the enormous windfall awarded to [Amy Marnach], the Antenuptial Agreement cannot be deemed fair, reasonable or conscionable."

The evidence shows that both parties had hoped for a long-term marriage when they married for a second time. But they had been married to each other before, and the evidence shows that some of their relationship problems were ongoing and severe enough in Amy Marnach's view for her to insist that Dr. Marnach get professional help for his

behavioral issues. Despite his hopes and wishes, as the district court found, Dr. Marnach himself considered that the marriage could endure for less than a year because he included in the agreement a monetary inducement of $100,000 if the marriage lasted at least a year and $50,000 for every additional year the marriage existed. There is no evidence that this provision was requested by Amy Marnach or that she had suggested anything of the sort before Dr. Marnach had his attorney draft the agreement. It is apparent that it was in Amy Marnach's best financial interest that she not "flee" the marriage after a short time.

Additionally, Dr. Marnach tends to ignore the fact that he, rather than Amy Marnach, started the dissolution proceeding. Although there is evidence that Amy Marnach had consulted and apparently retained an attorney for a possible dissolution and had purchased furniture, she had taken no steps to actually dissolve the marriage as of the time Dr. Marnach started the proceeding. By commencing the proceeding, Dr. Marnach triggered the operation of the antenuptial agreement that he created.

Although Amy Marnach's attorney characterized the antenuptial agreement as generous to her, he also explained some of the property rights she would forgo if she entered the agreement. Dr. Marnach did agree to give to Amy Marnach one house, out of the eight parcels of improved real estate and one parcel of apparently unimproved real estate that he owned. He did agree to give her a car, but he retained for himself an airplane and two other cars. In terms of tangible assets, the agreement, according to Dr. Marnach's disclosure, provided for him to retain about $4,786,000 worth of assets while Amy Marnach was to receive approximately $417,000 in tangible assets.

Dr. Marnach also agreed to pay maintenance in the sum of $2,500 a month until Amy Marnach remarries or dies. This amounts to $30,000 annually out of $400,000 in annual income that Dr. Marnach disclosed as his estimated earnings for 2004 and 2005. Considering the ratio of assets each would have upon a dissolution, Amy Marnach did not receive a "windfall" as Dr. Marnach contends. What she might have received upon a dissolution without an antenuptial agreement is only a matter of speculation. But as the district court noted, citing *McKee-Johnson*,

> Indeed one of the goals, if not the primary purpose, of an antenuptial agreement is to alter state-prescribed property rights which would otherwise arise on dissolution of marriage. If the parties to a premarital agreement are limited to state provided property decisions, they would be deprived of their right to contract or to divide their property as they wish.

444 N.W.2d at 268, n.8. The supreme court in that case commented further on the substantive fairness analysis:

> [B]ecause a substantive fairness review intrudes upon the right of mature adults to freely contract with respect to the allocation of property and other rights, courts which have employed a substantive fairness review . . . have usually limited invalidation of contract provisions to those which could not have reasonably been foreseen and which have become so one-sided as to be oppressive or unconscionable.

Id. at 267 (footnote omitted).

Not only was a short-term marriage reasonably foreseeable, Dr. Marnach provided express financial inducement in the agreement to get Amy Marnach to stay married beyond one year. Had a remarriage of brief duration not been contemplated as a possibility or a risk, such an inducement would not have been necessary. Furthermore,

the evidence showed that Amy Marnach warned Dr. Marnach in writing that she would not continue with the marriage if he did not address the problems she cited. Furthermore, the property division and monetary contributions are not so one-sided in Amy Marnach's favor as to make the agreement oppressive or unconscionable.

Beyond the overall substantive unfairness that Dr. Marnach argues, he contends that the district court erred in interpreting the agreement to require an award of a house to Amy Marnach free and clear of the mortgage encumbering it.

The agreement provides that "RICHARD L. MARNACH agrees to transfer to AMY L. MARNACH (i) the ownership, free and clear, of one of the Thone Ridge properties located in Woodbury . . . ." Dr. Marnach selected one of the Thone Ridge properties for transfer. That property is encumbered by a $296,000 mortgage, and the issue is whether "free and clear" means free and clear of only Dr. Marnach's interest or free and clear of all encumbrances as well. The district court opted for the latter interpretation:

> The Court finds that at the time of the drafting . . . and even at the time of the execution of the antenuptial agreement, [Dr. Marnach] knew the Thone property was encumbered by a mortgage. He was the SOLE owner of the property and the SOLE party who knew whether there was a mortgage on the property. [Amy Marnach] had no access to this information. In drafting the antenuptial agreement, [Dr. Marnach] elected to use the terms "free and clear" instead of "subject to encumbrance."

The district court further found that "[Dr. Marnach's] attorney is aware of the terms of 'subject to encumbrance' and elected not to include said terms when [Dr. Marnach] drafted the Agreement."

When the terms of a contract are clear in their meaning, courts must simply enforce the contract as written, absent some infirmity that would invalidate it. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). But if a term is ambiguous, courts must interpret it in an effort to ascertain the parties' intent. *Fena v. Wickstrom*, 348 N.W.2d 389, 390 (Minn. App. 1984). A contract term is ambiguous if it is "susceptible to more than one interpretation based on its language alone." *Metro. Sports Facilities Comm'n v. General Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). "The determination of whether a contract is ambiguous is a question of law, but the interpretation of an ambiguous contract is a question of fact for the [fact-finder]." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003) (citations omitted).

The district court determined that the term "free and clear" as used in the antenuptial agreement is not clear on its face but rather is ambiguous. It is reasonable to conclude that it means only free and clear of Dr. Marnach's interest. It is, however, also reasonable to conclude that, considering Amy Marnach's financial circumstances and her complete dependence on Dr. Marnach for her economic support, the intent of the provision is to relieve Amy Marnach of the mortgage obligation as well. This latter possibility is augmented by the court's finding that a lawyer drafting such a provision would know to use the term "subject to encumbrance" if that is what was intended; and by the unreasonableness of supposing that Amy Marnach's request for a house meant a house encumbered by more than a quarter of a million dollars in mortgage debt. To infer the parties' intent in using a particular term, it is proper for the district court to look to the

circumstances surrounding the making of the contract. *Davis by Davis v. Outboard Marine Corp.*, 415 N.W.2d 719, 723 (Minn. App. 1987), *review denied* (Minn. Jan. 28, 1988). Two of those circumstances are the court's finding noted above and Amy Marnach's financial dependence, which is shown by the evidence. Furthermore, it is the general rule, although by no means absolute, that when the parties' intent cannot be determined from the contract, the contract is to be construed against the drafter, in this case Dr. Marnach. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). Considering this principle, and the parties' circumstances when the agreement was drafted, we agree with the district court that the intent of "free and clear" was that the property would be transferred free and clear not only of Dr. Marnach's interest but of the mortgage as well.

But this conclusion is even more clearly compelled by the language of the agreement itself. It is undisputed that Dr. Marnach was not only the sole owner of the property transferred to Amy Marnach but also was the sole mortgage obligor. He listed the property in his disclosure exhibit attached to the antenuptial agreement, and he identified the mortgage against the property as one of his "LIABILITIES." Paragraph 3(c) of the agreement states: "Neither party shall be responsible for or obligated to pay any liability incurred by the other; each party's property shall remain free from any encumbrance resulting from liabilities of the other . . . ."

Dr. Marnach created the mortgage against the property that became Amy Marnach's and, by the terms of the agreement, Amy Marnach is not obligated to pay any liability incurred by Dr. Marnach.

The district court did not err in finding the antenuptial agreement substantively fair.

$100,000 Cash Award

The antenuptial agreement provides that

> RICHARD L. MARNACH agrees to transfer to AMY L. MARNACH . . . (ii) the sum of one hundred thousand dollars ($100,000) if the parties have been married for at least one (1) year following the execution of this Agreement, and an additional fifty thousand dollars ($50,000) for each additional year of marriage following the execution of this Agreement prior to the time either party files a petition for dissolution . . . .

Amy Marnach sought to collect the $100,000 because the parties had been married for 13 months before their marriage was dissolved. The district court ruled that the provision meant that the parties intended to have remained married for at least a year but, because Dr. Marnach started the dissolution proceeding earlier than one year, that intent was not fulfilled. The fact that they remained married for 13 months, the court said, was attributable to "the slow moving wheels of the courts." Amy Marnach, by notice of review, challenges that conclusion.

Curiously, her argument depends on an incomplete reading of the provision. In her brief she argues that "the antenuptial agreement unambiguously states that "Upon dissolution . . . RICHARD L. MARNACH agrees to transfer to AMY L. MARNACH the sum of one hundred thousand dollars ($100,000) if the parties have been married for at least one (1) year following the execution of this Agreement . . . ." But she neglected to

include the remainder of the provision: " . . . prior to the time either party files a petition for dissolution . . . ."

We agree with Dr. Marnach's reading of the entire provision in light of the canon of construction known as *ejusdem generis*, which holds that "when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *Black's Law Dictionary* 594 (9th ed. 2009). The antenuptial agreement contains two specific classes of the same nature, namely, monetary awards. The general condition for the payment of any award in either class is marriage that endures for a year ($100,000 for the first year and $50,000 for each additional year). As part of that general condition, the parties chose to define the end point of "year" as being the date on which a party files a petition for dissolution of the marriage. The general condition that a marriage endures until a petition is filed follows the words delineating two classes of the same type of item and therefore applies to both classes of awards. Furthermore, this is a more reasonable reading than Amy Marnach's incomplete rendition because it does not seem plausible that the parties would define the end point of a year as relating to only the second class of award.

Thus, the district court did not err in denying this award to Amy Marnach, although we do not necessarily agree with its reasoning on that issue.

Affirmed.

LANSING, Judge (concurring specially)

I concur with the majority's conclusion that the antenuptial agreement was not the product of coercion and that it is not substantively unfair. I also agree that a petition for dissolution was filed less than one year from the date of the Marnach's second marriage, and thus the $100,000 transfer provision was not triggered. On the remaining issues that relate to full and fair disclosure and the mortgage on Amy Marnach's house, I concur in the resolution, but write separately because I would analyze those issues differently.

The statutory requirement in Minnesota Statute section 519.11 (2004) of "full and fair disclosure of the earnings and property of each party" reflects a common law principle, which stems from the confidential or fiduciary relationship between the parties. *See In re Estate of Kinney*, 733 N.W.2d 118, 124 (Minn. 2007) (discussing common law relating to antenuptial agreements). Failure to meet this requirement risks invalidation of the agreement. In determining whether the disclosure in a specific case is full and fair, Minnesota courts have looked at the record to determine whether the omission caused the contending party to have a significantly deflated view of the other party's assets, whether disclosure would have affected the contending party's willingness to sign the agreement, and whether the omission was a knowing concealment rather than a good-faith oversight. *See Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 456-57 (Minn. App. 1998) (discussing statutory standard for procedural fairness and need to consider nature and circumstances of omission), *review denied* (Minn. May 28, 1998).

The district court took these factors into consideration when it determined that Amy Marnach's failure to include the approximately $11,000 balance in an account did

not deprive Richard Marnach of full and fair disclosure of her assets. The district court specifically found that Richard Marnach knew that she received child support for her son and was saving the money for his college expenses. Although this finding has only minimal support in the record, it was uncontradicted at trial. Implicitly this finding indicates that Amy Marnach was not intentionally concealing the assets and no evidence indicates otherwise. *See Hill v. Hill*, 356 N.W.2d 49, 53 (Minn. App. 1984) (enforcing agreement because omission was good-faith oversight), *review denied* (Minn. Feb. 19, 1985). Additionally, the omitted amount did not give Richard Marnach a significantly deflated view of Amy Marnach's assets. *See Pollock-Halvarson*, 576 N.W.2d at 456-57 (enforcing agreement because contending party knew approximate value of other party's property before entering agreement). Because Amy Marnach was not attempting to conceal her property and did not substantially mislead Richard Marnach's understanding of her assets, I concur in the judgment.

Finally, I concur with the majority's conclusion that Amy Marnach is entitled to the Thone Ridge property free from the mortgage. To resolve any ambiguity in the antenuptial agreement's language, however, I would rely more heavily on the text of the agreement itself before turning to the canon of construction disfavoring the drafter. *See Turner v. Alpha Phi Sorority House*, 276 NW.2d 63, 67 (Minn. 1979) (discussing rule to construe ambiguous terms against drafter in context of other tools of interpretation).