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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **HAROLD FINKELSTEIN,**

3           Petitioner-Appellant,

4 v.

**NO. 30,327**

5 **ANITA KAY FINKELSTEIN**

6 **k/n/a ANITA KAY McNEER,**

7           Respondent-Appellee.

8 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

9 **Elizabeth E. Whitefield, District Judge**

10 L. Helen Bennett, P.C.

11 L. Helen Bennett

12 Albuquerque, NM

13 Armand T. Carian

14 Albuquerque, NM

15 for Appellant

16 Kraft & Hunter, LLP

17 Richard L. Kraft

18 Roswell, NM

19 for Appellee

20   **MEMORANDUM OPINION**

21 **FRY, Judge.**

1 This appeal concerns the validity and enforceability of a prenuptial agreement  
2 that was executed in Georgia. After initiating divorce proceedings against his wife in  
3 New Mexico, Harold Finkelstein (Husband) sought to enforce the terms of a  
4 prenuptial agreement (Agreement) executed by him and Anita Kay Finkelstein (Wife)  
5 prior to their 1994 wedding in Georgia. Husband appeals the district court’s decision  
6 to set aside the Agreement based on the court’s determination that circumstances had  
7 changed since the Agreement was executed so as to render its enforcement unfair and  
8 unreasonable. Applying Georgia law, we hold that the district court erred in setting  
9 aside the Agreement on this basis, and we therefore reverse and remand for further  
10 proceedings consistent with this Opinion.

11 **BACKGROUND**

12 Husband and Wife were married in June 1994 in Georgia. Shortly before their  
13 marriage, they executed the Agreement after consulting with their respective lawyers.  
14 The Agreement provided that its validity and enforceability were to be assessed under  
15 the law of Georgia. In the event of the parties’ divorce, the Agreement specifically  
16 provided that: (1) the parties’ assets jointly acquired during marriage would be  
17 subject to equitable division, (2) neither party would receive alimony or separate  
18 maintenance, and (3) the separate property of each party would remain “their  
19 respective sole and separate properties and shall not be subject to any claim for

1 equitable division of property, spousal support, or alimony.” The Agreement also  
2 included a “mutual release” provision stating that each party waived “any and all  
3 claims and rights . . . which he or she may acquire in the separately owned property  
4 of the other by reason of the[] marriage.” Attached to the Agreement were exhibits  
5 listing the parties’ respective assets and liabilities, which indicated that Husband and  
6 Wife had assets totaling \$900,381 and \$37,000, respectively, excluding their  
7 expectancy interests in inheritances at the time of their marriage.

8       After their wedding, Husband and Wife resided in Georgia for three years and  
9 then moved to Capitan, New Mexico. In 2007, Husband initiated divorce proceedings  
10 against Wife in New Mexico. At the time of their separation, Husband was sixty-eight  
11 years old and Wife was sixty-four years old. During the divorce proceedings,  
12 Husband sought to enforce the terms of the Agreement. After a hearing, the district  
13 court issued a letter decision declining to enforce the Agreement. The court then  
14 entered a final order that included findings of fact and conclusions of law consistent  
15 with the letter decision. The court determined that circumstances had changed since  
16 the Agreement was executed so as to render its enforcement unfair and unreasonable.  
17 The district court then characterized and divided the parties’ assets pursuant to New  
18 Mexico law. The district court’s decision to set aside the Agreement forms the basis  
19 of Husband’s appeal.

1 **DISCUSSION**

2       The sole issue on appeal is whether the district court erred in refusing to enforce  
3 the Agreement. As noted earlier, the Agreement was executed in Georgia and  
4 included a provision stating that its validity and enforceability were to be governed  
5 by Georgia law in the event of the parties’ divorce. The district court stated that it  
6 would apply Georgia law in the proceedings below, a decision that neither party  
7 challenges on appeal. We therefore apply Georgia law in our review of the district  
8 court’s decision to set aside the Agreement.

9       Under Georgia law, three criteria are considered in determining the  
10 enforceability of a prenuptial agreement: (1) whether the agreement was “obtained  
11 through fraud, duress or mistake, or through misrepresentation or nondisclosure of  
12 material facts,” (2) whether the agreement is unconscionable, and (3) whether “facts  
13 and circumstances [have] changed since the agreement was executed, so as to make  
14 its enforcement unfair and unreasonable.” *Scherer v. Scherer*, 292 S.E.2d 662, 666  
15 (Ga. 1982). In this case, the Agreement included express language directing a court  
16 to apply the *Scherer* factors in the event of the parties’ divorce.

17       [The parties] acknowledge that they have been informed that the law in  
18 the State of Georgia governing the enforceability of antenuptial  
19 agreements is that such agreements are not given carte-blanche  
20 enforcement, but, in the event of the parties’ divorce, the trial judge will  
21 consider the following: (a) whether the Agreement was obtained through  
22 fraud, duress, or mistake, or through misrepresentation or nondisclosure

1 of material facts; (b) whether the Agreement is unconscionable; and (c)  
2 whether the facts and circumstances have changed since the Agreement  
3 was signed, so as to make its enforcement unfair and unreasonable.

4 The district court determined that neither the first nor the second *Scherer* factors were  
5 present in this case. However, it found that the third *Scherer* factor applied to the  
6 parties' divorce in that circumstances had changed since the Agreement was executed  
7 so as to render its enforcement unfair and unreasonable.

8 The district court's order initially indicated that it considered the following to  
9 be changed circumstances: "[the] ages of the parties, the length of marriage, the  
10 disparity of the parties['] assets and the almost non-existence of a community estate."

11 We note that the court made further specific findings regarding the non-existence of  
12 a community estate, many of which were related to Husband's management of his  
13 assets and his business throughout the parties' marriage. In addition, the district court  
14 cited actions taken by the parties during their marriage that it believed showed that  
15 Husband and Wife "worked and managed . . . [H]usband's assets" throughout the  
16 marriage rather than "their [community] assets." Although the district court noted that  
17 these were "among many other factors" that it considered, we decline to speculate as  
18 to what other factors may have constituted changed circumstances that the court may  
19 have relied upon to support its holding.

1           On appeal, Husband contends that the district court’s application of the third  
2 *Scherer* factor to invalidate the Agreement was improper. Consistent with Georgia  
3 law, we review the district court’s ruling on the enforceability of a prenuptial  
4 agreement under an abuse of discretion standard. *Lawrence v. Lawrence*, 687 S.E.2d  
5 421, 422 (Ga. 2009). This means that “we review the trial court’s legal holdings de  
6 novo, and we uphold the trial court’s factual findings as long as they are not clearly  
7 erroneous.” *Id.* A court can abuse its discretion when it misapplies the law to the  
8 facts. *See Alexander Props. Group, Inc. v. Doe*, 626 S.E.2d 497, 499 (Ga. 2006)  
9 (holding that “the trial court abused its discretion when it misapplied the law to this  
10 case”).

11           In applying the third *Scherer* factor, a district court’s inquiry is primarily  
12 whether, “taking into account all relevant facts and circumstances, including changes  
13 beyond the parties’ contemplation when the agreement was executed, enforcement of  
14 the antenuptial agreement would be neither unfair nor unreasonable.” *Blige v. Blige*,  
15 656 S.E.2d 822, 824 (Ga. 2008). Although a number of Georgia cases have applied  
16 the first and second *Scherer* factors, we are aware of only four cases where Georgia  
17 appellate courts have considered what changes in facts and circumstances might  
18 render a prenuptial agreement unfair and unreasonable. *See Sides v. Sides*, 717 S.E.2d  
19 472, 473 (Ga. 2011); *Alexander v. Alexander*, 610 S.E.2d 48, 49 (Ga. 2005); *Mallen*

1 v. *Mallen*, 622 S.E.2d 812, 814 (Ga. 2005); *Hiers v. Estate of Hiers*, 628 S.E.2d 653,  
2 657 (Ga. Ct. App. 2006). *Mallen* is the most instructive on the issue before us.

3 In *Mallen*, the Supreme Court of Georgia addressed the third *Scherer* factor for  
4 the first time since its adoption of the three-part *Scherer* test for assessing the validity  
5 of prenuptial agreements. *Mallen*, 622 S.E.2d at 817. The court determined that  
6 foreseeability is the key element in the consideration of changed circumstances. *Id.*  
7 The court stated that in assessing facts and circumstances under the third *Scherer*  
8 factor, a court should consider whether the alleged changed circumstance was  
9 foreseeable at the time the prenuptial agreement was signed. If it was foreseeable, a  
10 party cannot later rely on that particular circumstance as a basis for rendering the  
11 agreement unfair and unreasonable. *Id.* Applying this reasoning to the facts in that  
12 case, the *Mallen* court determined that an increase in the husband’s net worth by \$14  
13 million during the course of an 18-year marriage was not a changed circumstance  
14 because the wife was familiar with the husband’s “financial circumstances from living  
15 with him for four years prior to marriage and [the wife] must have anticipated that his  
16 wealth would grow over the ensuing years.” *Id.* At the time the agreement was  
17 executed, the wife’s net worth was \$10,000 while the husband had a net worth of \$8.5  
18 million dollars. *Id.* at 814. The prenuptial agreement included financial disclosure  
19 forms as attachments to the agreement indicating the parties’ assets and liabilities. *Id.*

1 at 816. The court reasoned that since “the continued disparity in their financial  
2 situations was plainly foreseeable from the terms of the prenuptial agreement, [the  
3 w]ife cannot rely on that as a change in circumstance which renders the agreement  
4 unfair.” *Id.* at 817.

5 In the present case, the particular circumstances relied upon by the district court  
6 under the third *Scherer* factor were the ages of the parties, the length of the marriage,  
7 the financial disparity in the parties’ assets, and the non-existence of a community  
8 estate. The parties do not dispute the substance of these facts. The salient question  
9 under *Mallen* is whether these facts were foreseeable to the parties at the time they  
10 entered into the prenuptial agreement. We conclude that a proper application of  
11 Georgia law compels the conclusion that each fact was foreseeable to the parties.

12 The age of the parties and the length of their marriage were clearly foreseeable.  
13 Husband was 54 years old and Wife was 51 years old at the time of the marriage. At  
14 the time of the district court’s decision, Husband was 70 years old and Wife was 66  
15 years old. It is a matter of common sense that the natural aging process is an  
16 occurrence that can be anticipated. *See Hiers*, 628 S.E.2d at 658 (noting that there are  
17 no Georgia cases suggesting that the natural aging of a surviving spouse is a  
18 sufficient changed circumstance to warrant invalidation of a prenuptial agreement).  
19 And the length of the parties’ marriage—16 years—was a foreseeable possibility. *See*



1 *Mallen*, 622 S.E.2d at 817 (citing with approval *Reed v. Reed*, 693 N.W.2d 825, 836  
2 (Mich. Ct. App. 2005), which held that the lower court erred by finding that the length  
3 of the parties’ marriage was a change in circumstance that justified voiding a  
4 prenuptial agreement and stating that “[a] long marriage, which is, indeed, the whole  
5 idea of marriage, is as easily foreseen as a short marriage”). The Agreement itself  
6 includes no provisions premised on the length of the parties’ marriage.

7         As for the district court’s reliance on the disparity in the parties’ assets as a  
8 changed circumstance, the Georgia Supreme Court held in *Sides* that an increase in  
9 the husband’s net worth was not a changed circumstance where full financial  
10 disclosures were made at the time the prenuptial agreement was executed and the wife  
11 was aware of the significant disparity between the assets of her husband as a business  
12 owner and her own assets prior to their marriage. 717 S.E.2d at 473. In the present  
13 case, at the time of their marriage, Wife had a net worth of \$37,000 and Husband had  
14 a net worth of approximately \$805,000. Husband’s specific assets included his  
15 jewelry business, a Georgia residence, and a number of investment and bank accounts.  
16 Husband’s financial disclosures also indicated that he had an expectancy interest in  
17 an inheritance from his mother’s estate. Thus, based on the financial disclosures,  
18 Wife was aware at the time the Agreement was executed that there was a large  
19 disparity between Husband’s assets and her own prior to the marriage. She was also

1 aware that the value of Husband’s assets would increase during the marriage due to  
2 his inheritance, and there was no reason for her not to anticipate that the value of  
3 Husband’s business and other assets would also grow over time. Thus, the disparity  
4 in the parties’ assets noted by the district court at the time of the parties’ divorce  
5 essentially mirrored their financial circumstances at the start of marriage and,  
6 according to Georgia law, the disparity was not an unforeseeable change in  
7 circumstance that would render the Agreement unfair or unreasonable to Wife. *See*  
8 *Mallen*, 622 S.E.2d at 817 (holding that financial disparity was not a changed  
9 circumstance); *see also Hiers*, 628 S.E.2d at 658 (noting that the Supreme Court of  
10 Georgia has held that “because an increase in wealth is a ‘foreseeable’ change in the  
11 parties’ circumstances, it is not one that would invalidate a prenuptial agreement”).

12 Finally, we address the final set of circumstances relied on by the district court  
13 and emphasized by the Dissent, all of which relate to the “almost non-existence of a  
14 community estate.” Significantly, Georgia is not a community property state, so the  
15 concept of a “community estate” would have no meaning in the context of the  
16 Agreement. *See Brown v. Little*, 489 S.E.2d 596, 598 (Ga. Ct. App. 1997) (stating that  
17 “Georgia has never subscribed to a community property theory regarding assets  
18 acquired during marriage while the marriage exists”). Instead, Georgia has a system

1 “treating assets as either separate or marital property.” *Id.* We must therefore view  
2 the district court’s findings through the lens of Georgia’s concept of marital property.

3       During the parties’ marriage, Husband and Wife worked for Husband’s jewelry  
4 business and lived in a home in Capitan, New Mexico, that the court determined was  
5 Husband’s sole and separate property. In setting the Agreement aside, the court  
6 specifically found that “Husband’s complete control and management of all assets  
7 during the marriage worked de facto to minimize the community estate and . . .  
8 maximize his separate property assets.” The court also found that although the  
9 Agreement “gave Husband his business, [it] did not give him separate property  
10 ownership of the earnings of the business.” After noting that “[e]arnings are  
11 community property under New Mexico law[,]” the court determined that “Husband  
12 paid himself no salary, so no community estate could be accumulated.” It also found  
13 significant that “Husband ‘borrowed’ money from his separate property brokerage  
14 account and then . . . paid back sums [from his business profits] greater than these  
15 loans to his separate property account.” And, thus, it found that Husband’s actions of  
16 lending the business \$106,000 from his separate property brokerage account and then  
17 having his business pay back \$383,000 worked to “insure[] that there would be no  
18 community estate.”

1           It is clear that the district court evaluated the parties’ circumstances according  
2 to the community property concepts of New Mexico law, and the Dissent does the  
3 same. This by itself is contrary to the Agreement, which dictated that its interpretation  
4 be governed by Georgia law. In addition, the Agreement expressly provided that “any  
5 property acquired after the marriage . . . shall be the sole and separate property of the  
6 party in whose name the property is titled or held,” and that “each party waives . . .  
7 any and all claims and rights . . . which he or she may acquire in the separately owned  
8 property of the other by reason of their marriage.” Furthermore, the Agreement  
9 included no specific provision requiring the parties to create a marital estate. To the  
10 contrary, the Agreement provided that only jointly acquired assets during the marriage  
11 were subject to equitable division.

12           Given these provisions of the Agreement, it was foreseeable that Husband  
13 would maintain and grow his separate assets, including his business, and that he  
14 would acquire additional separate assets during the course of the marriage. Husband’s  
15 actions during the course of the marriage with respect to his separate assets and,  
16 specifically, his intermingling of funds between his separate business and brokerage  
17 accounts, were actions that were not beyond the contemplation of the parties at the  
18 time they executed the Agreement. It was not unreasonable for Husband and Wife to  
19 anticipate the possibility of divorce prior to their marriage and to seek to protect their

1 individual assets through the Agreement. *Scherer*, 292 S.E.2d at 666 (noting that it  
2 is not against Georgia public policy for parties “prior to marriage to anticipate the  
3 possibility of divorce and to establish their rights by contract in such an event as long  
4 as the contract is entered with full knowledge and without fraud, duress[,] or  
5 coercion”).

6         We are not aware of any Georgia authority that has recognized that the non-  
7 existence of a marital estate constitutes a changed circumstance that would render a  
8 prenuptial agreement unenforceable. *Cf. Reed*, 693 N.W.2d at 836 (noting that a  
9 disparate growth in the parties’ separate assets was not a changed circumstance where  
10 the parties’ prenuptial agreement reflected an intent that the parties “agreed to be  
11 captains of their own financial ships and to decide their own destiny” (internal  
12 quotation marks and citation omitted)). We conclude that the district court  
13 erroneously failed to apply Georgia law in evaluating the enforceability of the  
14 Agreement. Georgia law establishes that none of the circumstances cited by the  
15 district court would constitute a change in circumstances that would make  
16 enforcement of the Agreement unfair or unreasonable. *See Sides*, 717 S.E.2d at 472-  
17 73 (upholding prenuptial agreement that left the wife with \$250,000 and a car  
18 although husband’s net worth had doubled during an almost twenty-year marriage and  
19 the parties’ estate was valued at \$8 million at the time of divorce); *see also Mallen*,

1 622 S.E.2d at 814, 817 (upholding prenuptial agreement that gave the wife \$2,900 per  
2 month in alimony for four years and gave the husband, whose net worth had increased  
3 by \$14 million during the marriage, all of the assets he entered the marriage with as  
4 well as all assets acquired during the marriage); *Adams v. Adams*, 603 S.E.2d 273, 274  
5 (Ga. 2004) (upholding a prenuptial agreement that perpetuated an already existing  
6 financial disparity between the parties where there was full and fair disclosure of the  
7 parties' assets prior to the marriage and the wife had entered into the agreement  
8 voluntarily after consulting with her counsel).

9       Finally, in response to the Dissent's contention that public policy considerations  
10 support the district court's invalidation of the Agreement, we are aware of no  
11 authority in New Mexico or Georgia holding that a married couple's move to a  
12 community property state renders unenforceable an otherwise valid prenuptial  
13 agreement.

14 **CONCLUSION**

15       We reverse the district court's decision to set aside the Agreement and remand  
16 this case for further proceedings consistent with this Opinion.

17 **IT IS SO ORDERED.**

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CYNTHIA A. FRY, Judge

1 **I CONCUR:**

2  
3 **JONATHAN B. SUTIN, Judge**

4 **TIMOTHY L. GARCIA, Judge (dissenting).**

5 **GARCIA, Judge (dissenting).**

6 I respectfully disagree with the majority and conclude that the district court did  
7 not abuse its discretion when it found that the facts and circumstances had changed  
8 since the parties entered into the Agreement, thereby making its enforcement unfair  
9 and unreasonable.

10 The district court recognized that both *Scherer* and *Alexander* grant the court  
11 equitable power and discretion to approve a prenuptial agreement under Georgia law,  
12 either in whole or in part, or refuse to approve it as a whole. Paragraph 3 of the  
13 parties' Agreement also recognizes that "a change in the domicile of one or both of  
14 the parties could render this Agreement unenforceable." Because the district court  
15 found changed circumstances which rendered the enforcement unfair and  
16 unreasonable, we must now review the district court's decision regarding the  
17 enforceability of the prenuptial agreement for an abuse of discretion. Majority  
18 Opinion p. 6. "An abuse of discretion occurs when a ruling is clearly contrary to the

1 logical conclusions demanded by the facts and circumstances of the case.” *Sims v.*  
2 *Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153. When reasons both  
3 supporting and detracting from a decision exist, there is no abuse of discretion. *Talley*  
4 *v. Talley*, 115 N.M. 89, 92, 847 P.2d 323, 326, (Ct. App. 1993).

5 In reversing the district court’s decision, the majority considered the  
6 foreseeability of the disparity in the parties’ ages and assets, the length of the  
7 marriage, and the non-existence of a community estate at the time the parties signed  
8 the Agreement. Majority Opinion pp. 8-11. The majority concluded that these factors  
9 were all foreseeable under Georgia law and that, as a matter of law, enforcement of  
10 the Agreement could not be unfair and unreasonable. Majority Opinion pp. 5, 14.

11 I believe that the majority improperly reviewed the facts supporting the district  
12 court’s decision and improperly limited its foreseeability analysis under Georgia law  
13 by not analyzing the numerous other factors identified in the district court’s written  
14 findings to support its determination that the enforcement of the Agreement was unfair  
15 and unreasonable. Applying Georgia law, I conclude that Husband’s conduct in  
16 controlling and manipulating the marital assets once the parties moved to New  
17 Mexico, intentionally widening the disparity in wealth at the time of divorce,  
18 constituted conduct that was unforeseeable at the time the parties entered into the



1 Agreement. *See Mallen*, 622 S.E.2d at 817 (recognizing that foreseeability is the key  
2 factor in considering whether there are changed circumstances).

3       As the majority notes, at the time of their marriage, Wife had a net worth of  
4 \$37,000 plus two expectancy interests in inheritance and Husband had a net worth of  
5 approximately \$805,000 plus one expectancy interest in inheritance. Majority  
6 Opinion p. 3. At the time of divorce, Husband's separate assets totaled in excess of  
7 \$825,000 while Wife's assets totaled zero, with neither party identifying any further  
8 expectancy interests in their previously identified inheritances. The majority asserts  
9 that this disparity was foreseeable because Wife was aware of the disparity between  
10 Husband's assets and her own prior to the marriage, and she could reasonably  
11 anticipate that the value of Husband's business would also grow over time and  
12 otherwise increase due to his inheritance. Majority Opinion p. 10. Similarly, the  
13 majority asserts the disparity in assets at the time of divorce was foreseeable because  
14 it essentially mirrored their financial circumstances at the start of the marriage.  
15 Majority Opinion p. 10. I agree with the majority that an increase in a husband's net  
16 worth might not, on its own, constitute a changed circumstance invalidating the  
17 Agreement under Georgia law. However, the majority erred by not considering the  
18 factors relevant to how Husband's intentional conduct created an unforeseeable  
19 increase in the disparity between the parties assets that remained at the time of

1 divorce. Instead, the majority decline to speculate as to what other factors the court  
2 may have relied upon to support its holding that were changed circumstances pursuant  
3 to its application of Georgia law. Majority Opinion p. 5.

4       It does not require any speculation to consider the other factors relied upon by  
5 the district court because these factors were all set forth in detail and clearly stated in  
6 the court’s written findings and conclusions. The court found that Husband had  
7 “complete control and management of *all* assets during the marriage.” (Emphasis  
8 added.) While in complete control, Husband managed the parties assets so as to  
9 manipulate community earnings, build and fix up his residential properties, structure  
10 egregious loans and profits between his jewelry business and his brokerage account,  
11 and minimize the community estate after moving to New Mexico. In addition,  
12 Husband had Wife either working for his separate property jewelry business or  
13 working and managing his separate assets. While exercising total control over the  
14 marital assets and property, Husband then depleted the entirety of Wife’s separate  
15 assets and her two inheritances to zero in value, while he protected, preserved, and  
16 built up his separate estate by more than \$20,000. Significantly, the district court also  
17 found that Husband’s management of the assets during the marriage “worked de facto  
18 to minimize the community estate and replace[,] preserve[,] and maximize his separate  
19 property assets.” I agree with the district court that, under Georgia law, this conduct

1 by Husband was not foreseeable to Wife at the time the Agreement was signed in  
2 Georgia. Such a finding is supported by sufficient evidence and does not constitute  
3 an abuse of discretion. In addition, the district court did not abuse its discretion in  
4 determining that Husband’s manipulation and control of the parties’ entire separate  
5 and community estates rendered the Agreement unfair and unreasonable under  
6 Georgia law.

7 Under the terms of the parties own Agreement and Georgia law, the district  
8 court properly found that Wife presented sufficient evidence to establish the change  
9 in circumstance factor created in *Scherer*. Although Husband did present contrary  
10 evidence, where sufficient evidence and findings were also presented to support the  
11 decision of the district court, there is no abuse of discretion. *Talley*, 115 N.M. at 92.

12 Finally, Husband’s conduct after their move to New Mexico in squandering the  
13 community estate for the benefit of his separate assets is a breach of the fiduciary duty  
14 owed by spouses to one another in New Mexico. *See Roselli v. Rio Communities*  
15 *Serv. Station, Inc.*, 109 N.M. 509, 514, 787 P.2d 428, 433 (1990) (determining that a  
16 spouse’s “power to manage and dispose of the community’s personal property . . . [is]  
17 subject to a fiduciary duty to the other spouse”). In cases such as this one, a prenuptial  
18 agreement from a non-community property state cannot necessarily consider or  
19 address the distinct community property concerns that will arise when a couple moves

1 to New Mexico and resides here for the vast majority of their married life. As a result,  
2 public policy implications will undoubtedly arise in these situations. Because of these  
3 public policy concerns, our courts should be given broad latitude to impose fiduciary  
4 obligations and strictly construe prenuptial agreements from other states that do not  
5 recognize or apply community property law in their jurisdiction. Specific to this case,  
6 applying New Mexico public policy considerations is legally consistent with the  
7 public policy principles that are recognized and applied under Georgia law. *See*  
8 *Scherer*, 292 S.E.2d at 664 (“[T]he enforceability of antenuptial agreements is, of  
9 course, a matter of public policy. And it would appear that where the enforcement of  
10 a [non-forum] contract in this state draws public-policy considerations into question,  
11 those public-policy considerations will be determined according to the laws of this  
12 state.”). Thus, I would conclude that public-policy considerations should reciprocate  
13 in this case and would support the district court’s determination that it was unfair and  
14 unreasonable to enforce the parties’ Agreement in New Mexico where Husband chose  
15 to control and manipulate all of the parties assets at the expense of Wife’s separate  
16 property and the community estate. As a result, I would affirm the district court’s  
17 decision to set aside the Agreement.

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**TIMOTHY L. GARCIA, Judge**