IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of The Estate of:	)	**No. 29674-1-III**
LINDA C. DAVILA,	)	
Deceased.	)	
Eliseo Figueroa,	)	
Respondent,	)	**Division Three**
v.	)	
HECTOR CHAVEZ, Personal Representative of The Estate of Linda C. Davila, Deceased,	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — The estate of Linda Davila appeals the trial court's decision to invalidate the prenuptial agreement Ms. Davila entered into with her husband, respondent Eliseo Figueroa. Although the result certainly frustrates her intent, we agree that the prenuptial agreement was invalid and affirm.

FACTS

The parties married on September 29, 2007, after living together four years. Mr. Figueroa was an illegal alien supervised by the Immigrations and Customs Enforcement Agency (ICE); Ms. Davila had posted a $5,000 bond with ICE to stay his deportation. Mr. Figueroa had roughly $1,500 in savings, a car he had signed over to Ms. Davila in case of deportation, and a small amount of personal property. Ms. Davila owned a house in Sunnyside valued at $60,000 to $70,000 that was subject to a $2,700 mortgage. She owned two older cars in addition to the one Mr. Figueroa had signed over to her, as well as some personal property.

Ms. Davila had grandchildren she had adopted as her own, and a nephew she treated as a stepchild. Maria Nunez, a close friend, advised her to have a prenuptial agreement since Ms. Davila desired to leave her property to the grandchildren. She purchased a prenuptial agreement, written in English, from a stationary store that sold legal forms. Mr. Figueroa does not speak or write English; Ms. Davila did. Both were fluent in Spanish.

The day before the wedding, the parties signed the prenuptial agreement in front of a notary. They did not exchange any words, but Ms. Davila gestured at Mr. Figueroa to sign when it was his turn. It took approximately five minutes to execute the agreement.

The agreement provided that the separate property of the parties remained separate, including earnings from the property, and the parties retained their sole authority to manage their separate property. Any community property was subject to division, and the parties agreed that there would be no support in case of dissolution, separation, or death.

Ms. Davila died November 5, 2008. She left a will that excluded Mr. Figueroa and left her estate to her grandchildren and nephew. During probate, it was discovered that she was not the person who signed her name to the will; it was withdrawn. Mr. Figueroa moved to intervene, asserting a statutory interest in the estate. The matter was set for trial concerning the validity of the prenuptial agreement.

Mr. Figueroa filed a motion that sought to declare the agreement invalid.[1] The Honorable Michael J. Schwab heard the matter April 8, 2010. Mr. Figueroa testified at the hearing that he had never seen the agreement before he signed it and did not speak to an attorney before signing. He also was unaware of any assets that Ms. Davila owned

[1] The motion was styled as a summary judgment and much of the documentation refers to it as a summary judgment proceeding. However, testimony is not taken at a summary judgment and the court does not resolve factual disputes, nor does it enter findings. CR 56; *Humbert v. Walla Walla County*, 145 Wn. App. 186, 192 n.3, 185 P.3d 660 (2008). In light of the actual nature of the proceedings, and of the subsequent order and findings entered after the reconsideration, it appears that the matter was handled in accordance with the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW. We view the original motion and the subsequent proceedings through that lens.

other than the house or the two cars. The notary testified concerning the signing in the manner described above. Ms. Nunez testified that after the marriage, Ms. Davila told her that Mr. Figueroa had signed the prenuptial agreement, but "didn't know what he signed."

Judge Schwab denied the motion, ruling that RCW 5.60.030 (the "deadman's statute") precluded consideration of all the relevant evidence Mr. Figueroa had submitted. Mr. Figueroa moved for reconsideration. On December 17, 2010, Judge Schwab reversed himself and concluded that the prenuptial agreement was defective in light of *In re Marriage of Bernard*, 137 Wn. App. 827, 155 P.3d 171 (2007), *aff'd*, 165 Wn.2d 895, 204 P.3d 907 (2009).

The presentation of the order was set for December 30, 2010, one day before Judge Schwab's retirement. The estate's attorney and representative appeared at the appointed time but found the courtroom closed and no judge or staff present. After inquiring at the clerk's office, counsel for the estate learned that Mr. Figueroa's attorney had appeared ex parte before the judge on December 29, had obtained the judge's signature, and had filed the order with the clerk. Mr. Figueroa's attorney notes in his brief that the change in day resulted from a mix-up over an order shortening time, which was required because of Judge Schwab's pending retirement. He also told this court during oral argument that the change of date had been approved by opposing counsel's

office over the telephone. The parties located the judge and held a brief telephone hearing on the afternoon of December 30. The court held that the matter was concluded as previously decided.

The estate then timely appealed to this court.

ANALYSIS

The primary issue in this appeal involves the validity of the prenuptial agreement.[2] We conclude that there was sufficient admissible evidence to determine that the agreement was invalid.

The Trust and Estate Dispute Resolution Act (TEDRA) is a broad grant of power to the trial courts to act to resolve disputes in the administration of trusts and estates. *See generally* chapter 11.96A RCW. Former RCW 11.96A.030 (2008) allows a beneficiary[3] to bring a "matter"[4] before the superior court. RCW 11.76.050 provides that courts

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[2] Counsel for the estate argues eloquently and at some length concerning the confusion over the presentation hearing. While we share his concern about the matter, we fail to see any prejudice to the estate. Counsel was permitted to make objections and express concerns about the findings, which is the purpose of a presentation hearing. Because the only substantive matter at issue is the trial court's determination that the prenuptial agreement was invalid, a legal matter we do address on the merits, there is no prejudice from the manner in which the reconsideration order was entered.

[3] Former RCW 11.96A.030(4)(e) defines a "beneficiary" as a "party" for purposes of chapter 11.96A.

[4] A "'matter' includes any issue, question, or dispute involving: . . . (b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity; [or] (c) The determination of any question arising in the

hearing a petition for distribution have authority to "make partition, distribution and settlement of all estates in any manner which to the court seems right and proper." Similar is RCW 11.96A.020(2), which provides a trial court with "full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper" in actions arising under the TEDRA chapter. We believe the trial court was acting under these authorities in its handling of this action.

To determine the enforceability of a prenuptial agreement, this court uses a two-pronged analysis. *In re Marriage of Matson*, 107 Wn.2d 479, 482-83, 730 P.2d 668 (1986). Under the first prong of the analysis, the court determines whether the agreement is substantively fair by making fair and reasonable provision for the party not seeking enforcement. *Id.* at 482. The substantive fairness of the agreement is evaluated as of the time of the execution, rather than based on the parties' circumstances at the time of enforcement. *In re Marriage of Zier*, 136 Wn. App. 40, 47, 147 P.3d 624 (2006), *review denied*, 162 Wn.2d 1008 (2007). The spouse seeking enforcement of the agreement bears the burden of proof. *Friedlander v. Friedlander*, 80 Wn.2d 293, 300, 494 P.2d 208 (1972). This is entirely a question of law unless there are factual disputes that must be resolved in order to interpret the meaning of the contract. *In re Marriage of Foran*, 67

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administration of an estate or trust." Former RCW 11.96A.030(1).

Wn. App. 242, 251 n.7, 834 P.2d 1081 (1992). If the agreement makes a reasonable and fair provision for the spouse not seeking its enforcement, then the agreement is enforceable. *Whitney v. Seattle-First Nat'l Bank*, 90 Wn.2d 105, 111, 579 P.2d 937 (1978). However, if the agreement is found to be substantively unfair to the spouse not seeking enforcement of the agreement, then the court proceeds to the second prong of the analysis.

Under the second prong, the court determines whether the agreement is procedurally fair by using a two-part test. First, the court looks at whether the spouses made a full disclosure of the amount, character, and value of the property involved. *Matson*, 107 Wn.2d at 483. Second, the court determines whether the agreement was freely entered into on independent advice from counsel with full knowledge by both spouses of their rights. *Id.* If the court determines the agreement is procedurally fair, then an otherwise unfair distribution of property is valid and binding. *Id.* at 482. Review of analysis under the second prong is de novo, but undertaken in light of the trial court's resolution of the facts. *Foran*, 67 Wn. App. at 251.

In *Bernard*, the wife filed for dissolution and moved for summary judgment, challenging the enforceability of a prenuptial agreement the parties signed. 137 Wn. App. at 831-832. At the time the parties married, the wife owned an estimated $38,000 in

assets, whereas the husband was worth about $25 million. *Id.* at 830. The husband and his lawyer advised the wife to obtain independent counsel to review the prenuptial agreement, but did not provide a draft of the agreement until 18 days before the wedding. *Id.* The wife met with a lawyer three days before the wedding, and that night she received another working draft of the agreement that was substantially different from the first. *Id.* at 830-831. The day before the wedding, the wife received a letter from her attorney identifying five problem areas in the agreement. The wife signed the agreement the day before the wedding, with the understanding that it would be amended to deal with the five areas of concern. *Id.*

The court in *Bernard* first determined that the agreement as amended was substantively unfair. *Id.* at 834-835. The court determined that the agreement was unfair because it severely restricted the creation of community property, eliminating community property rights in the short term while permitting the husband to enrich his separate property at the expense of the community. *Id.* at 834. The court also noted that the agreement was unfair because the provisions it made for the wife were disproportionate to the means of the husband: it limited the wife's inheritance rights, prevented her from seeking spousal maintenance, and did not provide for reimbursement for any contributions to the husband's separate property. *Id.* at 834-835. Under the second part

of the analysis, the court concluded that the agreement was also procedurally unfair because the wife did not have the benefit of independent counsel since there was not enough time for her and her attorney to adequately review the prenuptial agreement, her bargaining position was grossly imbalanced, and "at no time did [she] have full knowledge of her legal rights." *Id.* at 835.

The estate concedes that *Bernard* sets forth the correct standard for determining the validity of a prenuptial agreement. However, the estate argues that the immediate case is distinguished from *Bernard* by virtue of the completely speculative nature of the evidence presented by Mr. Figueroa, which the trial court already determined was barred by the deadman's statute.

The parties do not challenge the trial court's ruling concerning the deadman's statute and we need not consider that question because there was sufficient admissible evidence to establish that the prenuptial agreement was invalid. We reach that conclusion from three uncontested facts that are not subject to the deadman's statute: (1) Ms. Davila had substantially more property than Mr. Figueroa, (2) Mr. Figueroa does not read English, and (3) Mr. Figueroa did not have the benefit of counsel before signing the agreement.

The first fact is critical to the initial inquiry—whether the agreement was

substantively unfair. *Matson*, 107 Wn.2d at 482. This agreement was. Ms. Davila's primary asset, her house, was 40 times more valuable than the total sum of Mr. Figueroa's personal belongings and savings. While that disparity alone is not dispositive, the agreement also purported to eliminate any support or inheritance for Mr. Figueroa no matter how long the marriage lasted. In light of these two facts, the agreement was significantly slanted in Ms. Davila's favor. The trial court correctly determined that the agreement was substantively unfair.

The remaining issue is whether the agreement was procedurally unfair. *Id*. at 483. While it appears that Mr. Figueroa knew the nature and approximate value of Ms. Davila's assets from living with her for four years, the fact that he does not read English confirms that he did not know the nature of the agreement he was signing. This court has previously found that a prenuptial agreement written in a language that one of the parties did not understand was invalid because there could be no meeting of the minds. *In re Marriage of Obaidi*, 154 Wn. App. 609, 616-617, 226 P.3d 787, *review denied*, 169 Wn.2d 1024 (2010). This agreement fails for that same reason.

The agreement was also procedurally unfair for a second reason. Mr. Figueroa did not have the benefit of counsel. *Bernard*, 137 Wn. App. at 835. While the absence of counsel is not as serious a concern as it is in the case where one party has an attorney, we

believe this factor still has significant weight in view of the fact that Mr. Figueroa does not read English and does not appear to have been aware of the terms of the prenuptial agreement. This concern would be less weighty if he had been represented by counsel before entering the agreement.

In light of these facts, we agree with the trial court that this agreement was invalid. It was substantively unfair in light of the vast disparity of the parties' assets, and it was procedurally unfair because it was written in a language foreign to one of the parties and who lacked counsel. The estate has not established the validity of the agreement it seeks to enforce. Although it is clear that Ms. Davila hoped to provide for her grandchildren instead of her new spouse, her efforts failed because the procedure she used was not fair.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.