VALARA MAMOT, APPELLANT AND CROSS-APPELLEE, V. KEVIN B. MAMOT, APPELLEE AND CROSS-APPELLANT.

813 N.W.2d 440

Filed April 13, 2012. No. S-11-516.

1. **Divorce: Child Custody: Child Support: Property Division: Alimony: Attorney Fees: Appeal and Error.** In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion.
2. **Appeal and Error.** In a review de novo on the record, an appellate court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at issue.
3. **Antenuptial Agreements: Proof.** The party opposing enforcement of a premarital agreement has the burden of proving that the agreement is not enforceable.
4. **Antenuptial Agreements.** Nebraska's courts are governed by Nebraska's version of the Uniform Premarital Agreement Act, which authorizes parties who are contemplating marriage to contract with respect to matters including the rights and obligations of each party in any property of the other, the disposition of property upon divorce, and the modification or elimination of spousal support.
5. ____. A premarital agreement cannot be in violation of public policy or in violation of statutes imposing criminal penalties.
6. ____. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that (1) that party did not execute the agreement voluntarily or (2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party (a) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; (b) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and (c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.
7. **Judgments: Antenuptial Agreements.** An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.
8. ____: ____. Factors that a court might consider in determining whether a premarital agreement was entered into voluntarily include (1) coercion that may arise from the proximity of execution of the agreement to the wedding or from surprise in the presentation of the agreement; (2) the presence or absence of independent counsel or of an opportunity to consult independent counsel; (3) inequality of bargaining power, in some cases indicated by the relative age and sophistication of the parties; (4) whether there was full disclosure of assets; and (5) the parties' understanding of the rights being waived under the agreement or at least their awareness of the intent of the agreement.
9. **Antenuptial Agreements.** An inequality of bargaining power may be shown by the relative age and sophistication of the parties or by a disparity in the parties'

income and their respective assets at the time they entered into the premarital agreement.

10. **Judgments: Child Support: Appeal and Error.** Domestic matters such as child support are entrusted to the discretion of trial courts. A trial court's determinations on such issues are reviewed de novo on the record to determine whether there has been an abuse of discretion. Under this standard, an appellate court conducts its own review of the record to determine whether the trial court's judgment is untenable.
11. **Child Support: Rules of the Supreme Court: Appeal and Error.** Interpretation of the Nebraska Child Support Guidelines presents a question of law, regarding which an appellate court is obligated to reach a conclusion independent of the determination reached by the court below.
12. **Child Support: Rules of the Supreme Court.** The Nebraska Child Support Guidelines anticipate the contingency of fluctuating incomes.
13. ____: ____. The Nebraska Child Support Guidelines provide that income during the immediate past 3 years may be averaged.

Appeal from the District Court for Howard County: MARK D. KOZISEK, Judge. Reversed and remanded for further proceedings.

Sam Grimminger for appellant.

Barry D. Geweke, of Stowell, Kruml & Geweke, P.C., L.L.O., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

The Howard County District Court entered a decree of dissolution of the marriage of Kevin B. Mamot and Valara Mamot. The court determined that the premarital agreement entered into by the parties, although unconscionable, was valid and enforceable. The court divided the assets and entered an order regarding child support. Valara appeals, and Kevin has filed a cross-appeal. We reverse, and remand for further proceedings.

I. BACKGROUND

Kevin and Valara began living together in Kevin's house near St. Libory, Nebraska, in 2003. Valara had two children from a previous relationship, and Kevin had one child from a

previous relationship who lived with him. Kevin and Valara had two children together, twin daughters who were born on June 30, 2008.

The couple planned to get married on June 17, 2006, and discussed signing a premarital agreement prior to the marriage. Kevin testified that he and Valara had talked about his financial worth from the beginning of their relationship and that Valara knew from the time they started dating that his net worth was more than $1 million. Valara testified that she was unaware of the actual value of Kevin's assets, but she believed one of his businesses was worth more than $2 million. The parties eventually signed a premarital agreement, the contents of which will be discussed below, but Valara claimed that she did not see Kevin's financial statement prior to signing the agreement.

On April 28, 2010, Valara filed a petition for legal separation, in which she alleged that the premarital agreement was invalid because (1) it was not executed as contemplated by the parties, (2) it is unconscionable as a matter of law, (3) it is against public policy, and (4) the parties subsequently waived its terms and provisions.

On July 21, 2010, Kevin filed a counterclaim for dissolution of marriage. Kevin asked the court to (1) divide the assets and debts under the premarital agreement; (2) set aside his premarital and nonmarital property; (3) deny alimony; (4) grant joint legal custody of the parties' daughters and primary custody to Valara with reasonable rights of visitation for Kevin; (5) order child support, with credit for the support Kevin paid for his child from a previous marriage; (6) apportion nonreimbursed reasonable and necessary children's health care costs; and (7) allocate the dependency exemptions.

The trial court entered a decree of dissolution on May 27, 2011. The court determined that Valara executed the premarital agreement voluntarily; that she had time for an independent review of the premarital agreement, although she chose not to consult with independent counsel; that there was no convincing evidence that Valara was surprised that Kevin would require the premarital agreement; and that there was no evidence of an inequality of bargaining power between the parties. The trial

court also found that Valara did not meet her burden to establish Kevin's failure to fully disclose his assets.

The court then considered whether the premarital agreement was unconscionable. It found that the language of the premarital agreement "clearly defies the basic underpinnings of the marital relationship." The court also found that the premarital agreement as written "truly makes Valara an 'indentured servant', toiling with day-to-day activities with no possibility of accumulating any assets under the circumstances existing and the agreement as written." The court determined that the premarital agreement "is one-sided, evidences overreaching, and demonstrates sharp dealing not consistent with the obligations of marital partners to deal fairly with each other." The court found that the premarital agreement is unconscionable, but that "unconscionability alone does not make the [agreement] unenforceable."

The court found that Valara did not carry her burden to prove that before execution of the premarital agreement, (1) she was not provided a fair and reasonable disclosure of Kevin's property or financial obligations; (2) she did not voluntarily and expressly waive, in writing, any right to disclosure; and (3) she did not have, or reasonably could not have had, an adequate knowledge of Kevin's property or financial obligations.

Each party was awarded all property in his or her possession, subject to all encumbrances, including one-half of the 2009 federal and state tax refunds and the property described in the parties' joint property statement. Each was ordered to pay the debts incurred personally since the separation, and the debts on the joint property statement were divided. Neither party was ordered to pay alimony. Kevin was ordered to pay costs and an attorney fee of $9,500.

The parties were awarded joint legal custody of their twin daughters, and Valara was awarded physical custody subject to the parties' parenting plan. After determining that Kevin's average monthly income was $19,357 and Valara's average monthly income was $2,769.37, the court ordered Kevin to pay child support of $2,417 per month for two children. Kevin was also ordered to pay 86 percent of the childcare expenses and unreimbursed health care expenses.

II. ASSIGNMENTS OF ERROR

Valara assigns nine errors, which in summary assert that the trial court erred in finding that the premarital agreement was a valid, enforceable contract and in failing to award the parties' property in a fair and equitable manner.

On cross-appeal, Kevin argues, consolidated, that the trial court erred in (1) finding that the premarital agreement was unconscionable; (2) failing to use a 5-year average of commodity trading gains and losses in calculating Kevin's income for child support purposes; (3) determining that Kevin's monthly income for child support purposes was $19,357; and (4) ordering him to pay 86 percent of childcare expenses and unreimbursed health care expenses.

III. STANDARD OF REVIEW

[1] In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion and will normally be affirmed absent an abuse of that discretion.[1]

[2] In a review de novo on the record, an appellate court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at issue.[2]

[3] The party opposing enforcement of a premarital agreement has the burden of proving that the agreement is not enforceable.[3]

IV. ANALYSIS

[4,5] The primary issue before us is the enforceability of the premarital agreement. We are governed by Nebraska's version

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[1] *Reed v. Reed*, 277 Neb. 391, 763 N.W.2d 686 (2009).

[2] *Shearer v. Shearer*, 270 Neb. 178, 700 N.W.2d 580 (2005).

[3] *Edwards v. Edwards*, 16 Neb. App. 297, 744 N.W.2d 243 (2008), citing Neb. Rev. Stat. § 42-1006(1) (Reissue 2008) and *In re Estate of Peterson*, 221 Neb. 792, 381 N.W.2d 109 (1986).

of the Uniform Premarital Agreement Act,[4] which was adopted by Nebraska in 1994.[5] The act authorizes parties who are contemplating marriage to contract with respect to matters including the rights and obligations of each party in any property of the other, the disposition of property upon divorce, and the modification or elimination of spousal support.[6] The contract cannot be in violation of public policy or in violation of statutes imposing criminal penalties.[7]

[6,7] Specifically, § 42-1006 provides, in pertinent part:

> (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:
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> (a) That party did not execute the agreement voluntarily; or
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> (b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:
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> (i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
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> (ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
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> (iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.
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> . . . .
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> (3) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

As the party opposing enforcement of the premarital agreement, Valara has the burden to prove that the premarital agreement is not enforceable.[8] Pursuant to § 42-1006, Valara must prove *either* that she did not voluntarily execute the premarital

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[4] Neb. Rev. Stat. §§ 42-1001 to 42-1011 (Reissue 2008).

[5] See 1994 Neb. Laws, L.B. 202.

[6] See §§ 42-1002 and 42-1004.

[7] § 42-1004.

[8] *Edwards v. Edwards, supra* note 3.

agreement *or* that the premarital agreement was unconscionable when it was executed. If she seeks to prove that the premarital agreement was unconscionable, Valara must prove three conditions: that before execution of the agreement, (1) she was not provided a fair and reasonable disclosure of Kevin's property or financial obligations; (2) she did not voluntarily and expressly waive, in writing, her right to disclosure of Kevin's property and financial obligations beyond the disclosure provided; and (3) she did not have, or reasonably could not have had, an adequate knowledge of Kevin's property or financial obligations.

1. Did Valara Voluntarily Sign Agreement?

[8] We turn first to the question of whether Valara voluntarily executed the premarital agreement. Neither the Uniform Premarital Agreement Act nor corresponding Nebraska statutes define "voluntarily," and this court has not previously considered the term as related to a premarital agreement. The Nebraska Court of Appeals was asked to review such an agreement in *Edwards v. Edwards*.[9] That court relied on the California Supreme Court's interpretation of "voluntarily" as used in the Uniform Premarital Agreement Act.[10] The California court identified the following factors that a court might consider:

(1) "coercion that may arise from the proximity of execution of the agreement to the wedding, or from surprise in the presentation of the agreement";

(2) "the presence or absence of independent counsel or of an opportunity to consult independent counsel";

(3) "inequality of bargaining power—in some cases indicated by the relative age and sophistication of the parties";

(4) "whether there was full disclosure of assets"; and

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[9] *Id.*

[10] *Id.*, *citing In re Marriage of Bonds*, 24 Cal. 4th 1, 5 P.3d 815, 99 Cal. Rptr. 2d 252 (2000) (superseded by statute as stated in *In re Marriage of Cadwell-Faso and Faso*, 191 Cal. App. 4th 945, 119 Cal. Rptr. 3d 818 (2011)).

(5) the parties' understanding of the "rights being waived under the agreement or at least their awareness of the intent of the agreement."[11]

The Nebraska Court of Appeals noted that other jurisdictions have also relied on the California court's interpretation of "voluntarily."[12] We shall use these factors in our review of the Mamot agreement.

(a) Coercion or Surprise

Kevin and Valara lived together for 3 years prior to their marriage. Their wedding was scheduled to be held June 17, 2006. Both had signed premarital agreements for earlier marriages. They each testified as to the sequence of events that led to the premarital agreement at issue.

Valara testified that Kevin hinted about a premarital agreement several times before the marriage, but that the subject was usually dropped. Valara said she eventually agreed to a premarital agreement and told Kevin that if he had an agreement drawn up, she would have it reviewed by the attorney who drafted the premarital agreement for her previous marriage.

Valara stated that around June 9, 2006, Kevin came home for lunch and presented Valara with two copies of the premarital agreement, which Kevin told her she needed to read and sign. Valara noted that there was no signature page and was no financial statement listing the parties' assets, which she believed were normally included in a premarital agreement. Kevin also testified that no financial statements were attached to the copy he presented to Valara. Kevin told Valara he would obtain a financial statement form for her. Valara said that she and Kevin signed the premarital agreement and that Kevin took both copies with him, preventing her from further reviewing the document. That evening, Kevin gave Valara a financial statement form to complete, and she filled it out that night. Valara said she had no part in the preparation of the

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[11] *In re Marriage of Bonds, supra* note 10, 24 Cal. 4th at 18, 5 P.3d at 824-25, 99 Cal. Rptr. 2d at 262.

[12] *Edwards v. Edwards, supra* note 3.

premarital agreement and did not have any contact with the attorney who drafted it.

Valara stated that Kevin returned a few days later with one copy of the premarital agreement, which had a signature page attached. Valara told Kevin that they needed to list their assets and that she needed to have her attorney review the agreement, but Kevin said there was no time. Kevin reportedly said, "You've got to get this signed otherwise we're not getting married Saturday." Kevin did not contradict this statement, and he testified that Valara had had "plenty of time" to have the document reviewed by an attorney because she was not working outside the home at the time.

Valara signed the document on June 12, 2006, but it was not notarized. Valara said that she asked for a copy of the signed document but that she did not receive it until a month or two later. She stated that the copy she received did not have any financial attachments or a signature page.

Kevin said he and Valara began talking about the premarital agreement 3 or 4 months before the marriage because Valara had been married previously and he had been married twice, and both had used premarital agreements in their previous marriages. A letter dated June 3, 2006, which accompanied the premarital agreement, directed the parties to attach financial statements, sign the premarital agreement, and return the original to Kevin's attorney. Each party retained a copy.

Kevin testified that Valara had sufficient time to have an attorney review the premarital agreement before she signed it because she was not working outside the home. Kevin acknowledged that the premarital agreement was not notarized because there was not enough time to go to town to have it signed. Kevin said that he was in a hurry to sign it, but that Valara "had all day if she wanted somebody to look at it or go through it" and that Valara "could have had anybody look at it that she wanted."

The record suggests that Valara may not have been surprised at the idea of a premarital agreement, but it appears that she was surprised when Kevin actually presented it to her. The parties had discussed an agreement, but there is no indication that there had been recent discussions regarding the matter.

In order to get married in the Catholic church, which was Kevin's faith, it was necessary for Kevin to obtain an annulment of his second marriage. Valara testified that they started the annulment process in 2003 and that it was completed in 2006. Once the annulment was approved, Kevin and Valara set their wedding date for June 17, 2006, and she began making wedding plans.

Valara testified that she and Kevin each had two attendants at the wedding. About 20 members of their immediate families were at the church, and about 150 guests were present at the reception, which included a dance with music provided by a diskjockey. The parties' children were involved in the wedding.

The signed copy of the premarital agreement is dated June 12, 2006, which was the Monday prior to the wedding. Based on these facts, it is reasonable to find that Valara felt coerced into signing the agreement when Kevin presented it to her during the noon hour and told her she needed to sign it immediately or there would be no wedding. Kevin did not dispute these facts, which indicate a level of coercion. By that date, Valara had already paid for or made commitments to pay for invitations, the reception hall, flowers, a diskjockey, and wedding attire for the children. If the wedding were canceled, Valara would have been subjected to public embarrassment and possible financial loss.

At the time of the wedding, Valara had quit her job and was a homemaker taking care of three children. Kevin and Valara lived on an acreage outside of St. Libory, an unincorporated community in Howard County. Although Kevin testified that she had time to have the agreement reviewed by a professional, the reality is that she had only a few hours between when Kevin presented her with the agreement and when he returned and expected her to sign it. During that short time, she would have been required to attempt to find an attorney who would immediately review the agreement and advise her as to whether she should sign it. It is reasonable to believe that Valara felt she had no choice but to sign the agreement or the wedding would not take place as planned. Valara has met her burden to show that she was coerced into signing

the premarital agreement after Kevin delivered the ultimatum that she needed to sign the agreement or there would be no wedding.

(b) Independent Counsel

The record shows that the premarital agreement was prepared by Kevin's attorney at Kevin's request. Valara was not represented by independent counsel. Although Valara testified that she told Kevin she would have her attorney review the agreement, she stated that once Kevin presented the document to her, she did not have an opportunity to have it reviewed. Valara stated that Kevin told her that his attorney would "take care" of her. Kevin testified that he told Valara to consult with her own lawyer. Because both parties were busy, Valara told Kevin to have an agreement prepared because they both wanted such an agreement.

The dated copy of the agreement was signed on June 12, 2006, which was 5 days prior to the wedding. That time might have been sufficient for Valara to consult with an attorney. However, according to Valara's testimony, Kevin did not allow sufficient time for review when he first presented the premarital agreement to her. Kevin gave the document to her when he was home for lunch and expected her to sign it immediately. Kevin did not dispute Valara's testimony and asserted that Valara "had all day" if she wanted someone to review the agreement.

As noted above, Kevin and Valara lived on an acreage outside a small community. In order to obtain professional advice about the premarital agreement, Valara would have been required to first locate an attorney who would be willing to review it. The attorney would be required to agree to review the document in a short period of time. Valara would possibly have had to travel to meet with the attorney. A premarital agreement can be a complicated legal document that requires careful consideration of its provisions. At best, Kevin expected Valara to sign the agreement with only a few hours to consider it. Valara had fewer than 5 days before the wedding in which to seek legal advice—5 days in which she was also planning the wedding. The record supports a finding

that Valara did not have a sufficient opportunity to have the premarital agreement reviewed by independent counsel. Thus, Valara has met her burden to show this factor, which weighs in favor of finding that Valara did not voluntarily sign the agreement.

(c) Inequality in Bargaining Power

[9] The California Supreme Court identified inequality of bargaining power as another factor for a court to consider.[13] It noted that in some cases, this inequality may be shown by the relative age and sophistication of the parties. A California appeals court has also considered a disparity in the parties' income and their respective assets at the time they entered into a premarital agreement as an indication of an inequality of bargaining power.[14] We therefore review the record to consider whether there was an inequality of bargaining power.

Prior to the marriage, Valara worked for 6 years in medical administration and medical underwriting. She worked full time until January 1, 2006, when she began working 30 hours per week. In May, Valara's employer asked her to return to full-time work. But she quit on June 1 because Kevin said, "There's plenty to do around the house, you can fix it up, you can keep the yard up." Valara stated that she was not pleased about quitting and that she "love[d her] job."

Valara said that during the marriage, she had no way to earn income except by helping her grandmother on a farm and keeping financial records for her father. Valara said she earned about $1,500 to $2,000 per year from her grandmother and $2,000 to $3,000 per year from her father. She used that money to pay for gas, school lunches, clothing for the children, and groceries. Kevin provided her with $1,000 per month, which she used to pay the mortgage on a house she was renting out.

Valara spent a great deal of time working with Kevin's 14-year-old son from a previous marriage who had difficulties

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[13] *In re Marriage of Bonds, supra* note 10.

[14] *In re Marriage of Howell*, 195 Cal. App. 4th 1062, 126 Cal. Rptr. 3d 539 (2011).

at school and was eventually given psychiatric medication. Valara claimed to have worked with him for 4 to 6 hours each night until he was in the sixth grade. Valara stated that she helped Kevin in his professional life by doing whatever he asked of her, whether it was driving a truck or preparing meals for employees.

Kevin owns interests in three business organizations: one-half of a trucking company, one-half of a land and cattle company, and one-third of a feedlot company. There was also evidence that Kevin actively trades in the commodities market. Thus, it appears that Kevin is more sophisticated in business matters than is Valara. She was an employee in the insurance industry while Kevin was self-employed and actively involved in three business interests.

The record also suggests a disparity in the parties' income and assets at the time they entered into the agreement. Kevin had a much greater net worth at the time the agreement was signed. Testimony was offered that he was worth more than $1 million and possibly more than $2 million when the parties married. Prior to the marriage, Valara earned between $23,000 and $32,000 annually and had a retirement account worth $18,000. Valara quit her job just prior to the wedding.

There was also an inequality in the bargaining power of the two parties. While Valara had some business experience, she worked as an hourly employee for an insurance company. Kevin had partial ownership in three companies, serving as president of at least one of them, and traded in the commodities market. After Valara quit working outside the home, she was a homemaker who took care of five children as well as the house. Valara met her burden to show an inequality in the bargaining power of the two parties.

(d) Full Disclosure

The parties disputed whether there was adequate disclosure of assets prior to the signing of the premarital agreement and whether financial statements were attached to the premarital agreement when it was signed.

Valara stated that she did not see Kevin's financial statement before she signed the agreement and that she had no idea

that Kevin had a net worth in excess of $2 million. However, Kevin said that he and Valara had talked about his financial worth from the beginning of their relationship and that she understood she would be "financially set." Kevin believed Valara knew from the time they started dating that he had a net worth in excess of $1 million. Kevin asserted that Valara had an opportunity to see his financial statement before signing the premarital agreement. Although Valara admitted that she completed a financial statement, she maintained it was not a part of the premarital agreement.

The trial court noted that Valara testified she reminded Kevin on more than one occasion that the financial statements needed to be attached to the premarital agreement. Kevin provided the financial statement form for Valara to complete. There is no definitive evidence to show whether Kevin fully disclosed his assets to Valara prior to the signing of the premarital agreement. We have only the conflicting testimony of the two parties. As the trial court noted, the attorney who drafted the premarital agreement was not called as a witness to help explain whether the financial statements were attached to the premarital agreement.

In a review de novo on the record, an appellate court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at issue.[15] We determine that Valara did not meet her burden to show that she was not aware of the extent of Kevin's financial holdings before the agreement was signed.

(e) Parties' Understanding of Rights Being Waived or Awareness of Intent of Agreement

It is clear that both parties were aware of the purpose and intent of premarital agreements because each had entered into such agreements in earlier marriages. Valara demonstrated an understanding that assets are "[u]sually" listed "within the [agreement]." However, having an understanding of the intent of a premarital agreement and understanding the rights

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[15] *Shearer v. Shearer, supra* note 2.

being waived by the actual language of the agreement are not the same.

The premarital agreement provided that each party would retain sole ownership of all his or her property, "now owned or hereafter acquired by him or her, free and clear of any claim of the other." In the event of divorce, the parties agreed that neither would make any claim

> to any property now owned or hereafter acquired by the other party or to any separate property of the other party or to any appreciation or increase in value of such property during the marriage or to any property generated, earned or purchased by the other party as his or her sole and separate property.

The separate property of the parties was defined as all property belonging to each party at the commencement of the marriage, property "acquired by a party out of the proceeds or income from property owned at the commencement of the marriage or attributable to appreciation in value of said property, whether the enhancement in value is due to market conditions or to the services, skills or efforts of either party." The agreement also provided that any property "now owned or hereafter acquired in a party's name alone" shall be that party's separate property.

As the trial court determined, the agreement purported to "isolate as separate property" that which was owned by Kevin at the time of the marriage, but it also sought "to reach into the future to prevent any marital interest arising from income produced as a result of his ownership of these assets." The agreement left Valara as a homemaker who took care of the children with "no possibility of accumulating any assets under the circumstances existing and the agreement as written."

The trial court stated that the language of the agreement "defies" the basic underpinnings of the marital relationship, which should be "a partnership where both parties through their mutual efforts obtain assets subject to equitable division in the event of a dissolution." Under this agreement, Valara was an "'indentured servant.'"

The premarital agreement is a complex legal document which uses specialized terminology that might not be easily

comprehended by a person unfamiliar with the law. We find no evidence to suggest that Valara fully understood the terms of the agreement. Valara met her burden to demonstrate that she did not have a complete understanding of the rights she was waiving in signing the premarital agreement.

2. Agreement Was Not Voluntarily Signed

This court reviews the trial court's determinations de novo, but we are also reminded that the trial court's determinations are initially entrusted to its discretion and will normally be affirmed absent an abuse of that discretion.[16] As noted above, in a review de novo on the record, an appellate court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at issue.[17]

We have reviewed the record as it relates to the question of whether Valara voluntarily entered into the premarital agreement, and we find that the trial court abused its discretion in finding that she did. Taking into consideration the factors identified in *Edwards*,[18] we find that Valara was coerced into initially signing the document, during a lunch hour just a few days before the wedding and after the wedding invitations had been sent and she had already spent money on wedding preparations. Kevin told her she needed to sign the agreement or the wedding would not take place. Valara did not have an adequate opportunity to have independent counsel review the document. Although Kevin testified that Valara "had all day," that she had "plenty of time" to have the agreement reviewed because she was not working outside the home at the time, and that "she could have went [sic] to town" and "could have had anybody look at it that she wanted," it is unrealistic to believe Valara had the time and wherewithal to adequately review the agreement.

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[16] *Reed v. Reed, supra* note 1.

[17] *Shearer v. Shearer, supra* note 2.

[18] *Edwards v. Edwards, supra* note 3.

The record supports a finding that there was a disparity in the parties' income and their respective assets at the time they entered into the agreement, which indicates an inequality of bargaining power. Valara met her burden to show that she did not understand that by signing the agreement, she was waiving her right to full disclosure of Kevin's premarital property and giving up any claim to Kevin's property obtained during the marriage. The sole factor for which Valara did not meet her burden is whether there was a full disclosure of assets prior to the signing of the agreement. The evidence on that issue is in conflict.

After completing our de novo review, we find that Valara met her burden to show that she did not sign the premarital agreement voluntarily, and therefore, it is unenforceable.

Pursuant to § 42-1006, the party challenging a premarital agreement must show *either* that the agreement was not signed voluntarily *or* that it was unconscionable. If the challenging party seeks to show that the agreement was unconscionable, that party must also prove that he or she was not provided a fair and reasonable disclosure of the other party's property or financial obligations; that the challenging party did not voluntarily and expressly waive, in writing, any right to disclosure of the other party's property or financial obligations beyond the disclosure provided; and that the challenging party did not have, or reasonably could not have had, an adequate knowledge of the other party's property or financial obligations. Because we find that Valara did not sign the agreement voluntarily, we need not further address whether it was unconscionable.

V. CROSS-APPEAL

On cross-appeal, Kevin asserts that the trial court erred in (1) its determination of Kevin's child support, specifically by failing to use a 5-year average of income including commodity trading gains and losses in calculating his monthly income, and (2) its percentage allocations of childcare and unreimbursed health care expenses. Because we are remanding this case for further proceedings, we decline to reach Kevin's second argument on cross-appeal. But because the first is likely to recur on remand, we address it here.

A witness who had been Kevin's accountant since 1993 testified that Kevin had engaged in commodity trading over the duration of the marriage and had made profits in certain years and suffered losses in other years. He determined that Kevin's average yearly income for 2005 through 2010, including actual commodity losses and depreciation, was $115,952.

The trial court used information from four pay periods to determine that Valara's monthly income was $2,769.37. Because Kevin's income fluctuated substantially based on the nature of his businesses, the court determined that it should use the previous 4 years to calculate Kevin's monthly income, beginning with 2007, the first full year that the parties were married. The information included 2 years of gains and 2 years of losses. The court also determined that Kevin's actual income, rather than his reported income for tax purposes, should be used. The court then found that Kevin's income was as follows:

Year	Annual Income	Monthly Average
2007	($ 48,542)	($ 4,045)
2008	9,874	823
2009	561,793	46,816
2010	405,989	33,832

Based on these figures, Kevin's average monthly income over the 4 years was $19,357.

The court then ordered Kevin to pay child support of "$2,417.00 per month when there are two children subject to the order, and $1,777.00 per month when there is one child subject to the order." Kevin was ordered to pay 86 percent of the childcare expenses and 86 percent of unreimbursed health care expenses after the initial $480 per calendar year.

Kevin argues that the trial court should have used a 5-year average in calculating his income, which would have resulted in a monthly income of $12,016, rather than $19,357.

[10,11] Domestic matters such as child support are entrusted to the discretion of trial courts.[19] A trial court's determinations on such issues are reviewed de novo on the record to

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[19] See *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007).

determine whether there has been an abuse of discretion.[20] Under this standard, an appellate court conducts its own review of the record to determine whether the trial court's judgment is untenable.[21] Interpretation of the Nebraska Child Support Guidelines presents a question of law, regarding which an appellate court is obligated to reach a conclusion independent of the determination reached by the court below.[22]

[12,13] We have noted that the child support guidelines anticipate the contingency of fluctuating incomes.[23] The guidelines provide that income during the immediate past 3 years may be averaged. In *Gress v. Gress*,[24] we found it proper for the trial court to use income averaging to calculate child support. The father in *Gress* was a farmer, and he urged the court to use an 8-year average. We noted that both in Nebraska and in other jurisdictions, a 3-year average tended to be the most common approach, and that even if a longer period is used, courts are reluctant to use more than a 5-year average. We approved the 3-year average as used by the trial court.

In the case at bar, the trial court used Kevin's income from 4 years, beginning with 2007, the first full year of the parties' marriage. The 4-year period included 2 years of gains and 2 years of losses. Kevin argues that the court should have included his 2006 income. However, testimony was received from a certified public accountant that in averaging investment income, current years should be weighed more heavily, "because the further back you get in a volatile kind of an investment like commodities, the less valu[able] the information becomes."

We find no abuse of discretion in the trial court's use of 4 years of income to determine Kevin's child support obligation. The court used the first full year of the marriage as the starting

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[20] See *id.*

[21] See *id.*

[22] *Id.*

[23] See *id.*

[24] *Id.*

point and averaged Kevin's income. Those 4 years showed both profits and losses.

VI. CONCLUSION

The judgment of the district court finding that the premarital agreement is enforceable is reversed, and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.