In the Missouri Court of Appeals
Eastern District

DIVISION TWO

NICOLE M. GRAHAM,	)	No. ED112970
	)	
Appellant,	)	
	)	
v.	)	
	)	
DOUGLAS M. GRAHAM,	)	
	)	
Respondent.	)	Filed: November 25, 2025

Appeal from the Circuit Court of St. Louis County
The Honorable Julia P. Lasater, Judge

Introduction

Nicole M. Graham ("Wife") appeals the trial court's judgment dissolving her marriage to Douglas E. Graham ("Husband"). In her sole point on appeal, Wife contends the trial court misapplied the law in finding the agreement executed by Husband waiving his marital interest and rights to their marital property was invalid for not meeting the requirements of a postnuptial agreement. Wife argues the trial court erred because such waivers can only be considered postnuptial agreements if they concern property already owned by one spouse who has a vested rather than an inchoate estate.

This Court holds the trial court did not misapply the law in finding the Waiver was a postnuptial agreement and concluding the Waiver was invalid. We hold the Waiver was not entered into by Husband freely, knowingly, understandingly, and in good faith and with full disclosure nor was the Waiver conscionable.

Accordingly, the trial court's judgment is affirmed.

Factual and Procedural Background

Husband and Wife were married on October 10, 2007. They decided to purchase 14 Long Meadows Lane, Town & Country, Missouri (the "Property") and created the Long Meadow Land Trust (the "Trust") to hold the Property. On May 27, 2017, the Trust submitted a contract for the purchase of the Property. Wife signed the contract as broker and Husband signed the contract, on behalf of the Trust, as buyer. The next day, Husband, again on behalf of the Trust, signed a final amendment to the contract agreeing to purchase the Property.

The closing of the Property occurred on July 21, 2017. At the closing, Wife presented to Husband a document to sign, titled "Spousal Acknowledgement and Consent to Purchase of Real Property, and Waiver of Marital Interest and Rights" ("Waiver"). Husband signed the Waiver. Prior to the closing, Husband was not aware the Property was going to be titled solely in the name of Wife, her father, and her step-mother ("Parents"). Also, no amended contract was sent to the sellers to identify Wife and Parents as the buyers of the Property. Wife and Parents proceeded with the closing. The purchase price of the Property was $645,289.60. Parents paid $342,000.00 and the

remaining $303,289.60 was paid with marital funds. No mortgage was taken out on the Property.

On April 19, 2021, the parties physically separated. Wife filed her petition for dissolution of marriage on May 18, 2021 and Husband filed his counter-petition on June 21, 2021. The matter proceeded to trial.[1] Both Husband and Wife testified. Wife testified the Property is her separate property. She stated Husband never provided any maintenance or repairs to the Property. Wife also testified Husband signed the Waiver freely and voluntarily, and he intended to gift his interest in the Property to her. Wife acknowledged she gave Husband no consideration in exchange for his execution of the Waiver, but he was allowed to live at the Property without paying a mortgage.

Husband testified the Property is part martial property and part Wife's separate property. He maintained the amount of $303,289.60 to purchase the Property was the marital component and should be divided between the parties. Husband testified he signed the Waiver under duress and Wife told him they would not be able to purchase the Property if he did not sign the Waiver. Husband stated he received the Waiver at closing and was not given time to consult with a lawyer prior to signing. Husband claimed he felt compelled to sign the Waiver because he couldn't say "no to [Wife] without [her] screaming and an elevated response." Further, Husband testified about and submitted evidence of numerous repairs he made to the Property. Husband requested 50% of the

[1] Initially, Parents were parties to this litigation due to their ownership interest in the Property. On October 23, 2023, Parents deeded their interest in the Property to Wife and were subsequently dismissed as parties on November 7, 2023.

marital interest in the Property, which equaled $151,644.80. Husband did not request any portion of the increase in the value of the marital portion of the Property.

On May 31, 2024, the trial court entered its judgment of dissolution of marriage. In pertinent part, the trial court found Husband and Wife did not enter into a valid postnuptial agreement regarding the Property. Mainly, it found Husband did not enter into the Waiver freely and the Waiver was unconscionable because Husband did not receive fair consideration to waive his interest in the Property. Further, the trial court found the Property was part marital property and part separate property of Wife. Husband was awarded $151,644.90 as and for his portion of the martial component of the Property.

Wife filed a motion to amend the judgment or alternatively for a new trial on June 27, 2024. On September 3, 2024, the trial court entered its amended judgment and order. The trial court, in pertinent part, amended the judgment to correct the dollar amount awarded to Husband to $151,644.***80*** and specifically awarded the Property to Wife.

This appeal follows.

Standard of Review

"The judgment in a court-tried civil case will be sustained 'unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.'" *Lollar v. Lollar*, 609 S.W.3d 41, 45–46 (Mo. banc 2020) (quoting *Murphy v. Carron*, 536 S.W.2d 30, 32

(Mo. banc 1976)). Appellate courts presume "the property division was correct, and the appellant bears the burden of overcoming the presumption." *Id*. at 46.

Wife's sole point on appeal is a misapplication-of-the-law challenge. This Court reviews questions of law *de novo*. *In Interest of L.C.*, 477 S.W.3d 171, 174 (Mo. App. E.D. 2015). While this Court defers to the findings of fact in a court-tried case, "we make an independent evaluation of the conclusions of law the trial court draws from its factual findings." *Women's Care Specialists, LLC v. Troupin*, 408 S.W.3d 310, 316 (Mo. App. E.D. 2013) (quoting *Don King Equipment Co. v. Double D Tractor Parts, Inc.*, 115 S.W.3d 363, 269 (Mo. App. S.D. 2003)).

Discussion

In her sole point on appeal, Wife contends the trial court misapplied the law in finding the Waiver was invalid for not meeting the requirements of a postnuptial agreement. Wife argues, the trial court erred because waivers, such as the one at issue here, can only be considered a postnuptial agreement if they concern property already owned by one spouse who would have a vested rather than an inchoate estate. Thus, she contends the trial court erred in determining the Property was part marital and awarding Husband $151,644.80 as and for his interest in the Property.

This Court holds the trial court did not misapply the law in finding no valid postnuptial agreement was entered into by the parties. Here, the Waiver was not executed by Husband freely, knowingly, understandingly, and in good faith and with full disclosure as it was presented to him at closing. He had no opportunity to negotiate the

terms or consult an attorney. Further, the Waiver was unconscionable because Husband did not receive fair consideration to waive his interest in the Property.

In order to find the Waiver was a waiver to any claim to the Property and the Property was Wife's separate property, there must have been a valid postnuptial agreement. *See Bell v. Bell*, 360 S.W.3d 270, 279 (Mo. App. S.D. 2011). "A postnuptial agreement is '[a]n agreement entered into during marriage to define each spouse's property rights in the event of death or divorce.'" *Id*. (quoting Black's Law Dictionary 1286 (9th ed. 2009)). To be enforced, a postnuptial agreement must be entered into "freely, fairly, knowingly, understandingly and in good faith [and] with full disclosure." *Id*. (quoting *Lipic v. Lipic*, 103 S.W.3d 144, 149 (Mo. App. E.D. 2003)). This requirement considers the circumstances surrounding the inducement of the waiving party to sign the agreement. *Id*.

In addition, the agreement must be conscionable. *Id*. To make this determination, this Court must evaluate the fairness of the agreement's actual terms. *Id*. "An agreement is unconscionable when the inequality [is] so strong, gross, and manifest that it must be impossible to state it to one with common sense without producing an exclamation at the inequality of it." *Id*. (quoting *Lipic*, 103 S.W.3d at 149–50) (internal quotations omitted). "[T]he waiving spouse must receive fair consideration to waive that spouse's statutory rights; fairness is determined as of the date the parties enter into the agreement." *Id*.

On appeal, Wife contends the trial court improperly relied on *Bell v. Bell* and invites this Court to consider a Connecticut case, *Antonucci v. Antonucci*, 138 A.3d 297 (2016), to support her position that a waiver should not be viewed through the lens of

postnuptial agreements. She also cites to *Fed. Nat. Mortg. Ass'n v. Pace*, 415 S.W.3d 697 (Mo. App. E.D. 2013) and *In re Marriage of Null*, 608 S.W.2d 568 (Mo. App. S.D. 1980) for support. But Wife ultimately concedes, "this case comes down to … whether this Court will follow the Southern District's lead in applying *Bell v. Bell*, 360 S.W.3d 270 (Mo. App. S.D. 2011) to waivers of marital interest."

This Court finds *Bell* instructive as it sets forth the standard for determining the validity of a marital waiver, such as the one at issue in this case. For the Waiver to be valid, a valid postnuptial agreement must have been executed. *See Bell*, 360 S.W.3d at 279. Here, the record does not support the parties entered into a valid postnuptial agreement. Specifically, there is no evidence Husband signed the Waiver freely, fairly, knowingly, understandingly and in good faith and with full disclosure. Husband was given the Waiver at closing and he had no time to consult with an attorney. He also had no opportunity to consider and negotiate the terms of the Waiver. According to the testimony of both parties, the Waiver was executed at Wife's insistence. Notably, on appeal, Wife does not address whether Husband signed the waiver freely and knowingly, she only scrutinizes the standard used in *Bell*.

Additionally, the Waiver is unconscionable as Husband did not receive any, let alone fair, consideration to waive his rights to the Property. Wife argues Husband living at the Property without a mortgage was sufficient consideration. In essence, Wife argues Husband living with *her* in their *marital* home without a mortgage was fair consideration as if it was some kind of premium benefit that distinguishes them from other married couples. This argument is nonsensical. Husband living at the Property with Wife does not

constitute consideration as cohabitating is the norm when two individuals are married. Wife also lived at the Property without a mortgage and a portion of the purchase price for the Property undisputedly came from marital funds. Thus, the Waiver was unconscionable. Accordingly, the trial court did not err in finding the Waiver was invalid. *See Bell*, 360 S.W.3d at 279-80 (finding the trial court did not err in finding that agreements waiving wife's interest in certain properties, which were acquired during the marriage, were unenforceable as wife had no counsel, husband made no financial disclosure, and the waivers were unconscionable).

Furthermore, we find Wife's argument that this Court should apply *Antonucci*, *Null*, and *Pace* uncompelling. We decline Wife's invitation to follow *Antonucci* because, "[w]hile cases from other jurisdictions can provide useful and insightful guidance, they are not conclusive or binding precedent." *Baldwin v. Baldwin*, 667 S.W.3d 199, 207 n.7 (Mo. App. S.D. 2023) (citation omitted). Additionally, Wife argues *Pace* and *Null* are more analogous to the present case than *Bell*. She contends this Court should find the Waiver can only be considered a postnuptial agreement if it concerns property already owned by one spouse who would have a vested rather than an inchoate estate. Wife references one footnote in *Pace* to support her position that: "Nothing in this opinion should be construed to impair the validity of an assent where the spouse is waiving her inchoate marital interest in property." Then she cites to *Null* for the proposition that

"Wife had an inchoate interest, one which eventually ripened into a vested estate, but was merely incipient at the time Husband signed the Waiver."[2]

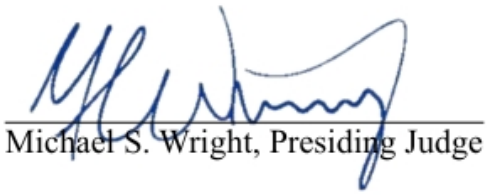
We find these cases are not applicable to the present case as they do not discuss how this Court should review waivers of marital property. Also, Wife's arguments are conclusory; she fails to develop an argument by comparing the facts of the cited cases and applying the legal principles of those cases to this case to effectively explain why, in the context of the case, the law supports the claim of reversible error. *See Campbell v. Woodland Lakes Trusteeship, Inc*., 591 S.W.3d 511, 513 (Mo. App. E.D. 2019).

Accordingly, Wife has failed to satisfy her burden of demonstrating the trial court misapplied the law. As such, the trial court did not err in finding the Waiver invalid and awarding Husband $151,644.80 as and for his interest in the Property.

Wife's sole point on appeal is denied.

Conclusion

For the forgoing reasons, the trial court's judgment is affirmed.



Michael S. Wright, Presiding Judge

Philip M. Hess, Judge and
Virginia W. Lay, Judge concur.

[2] To the extent Wife argues she had an inchoate interest versus a vested interest, this Court cannot find nor does Wife point this Court to any binding authority that requires this Court to distinguish between an inchoate interest and a vested interest to determine if a waiver, such as the one at issue here, is valid. To support her claim, Wife simply cherry-picks quotes from cases dealing with inchoate interests without developing any argument.