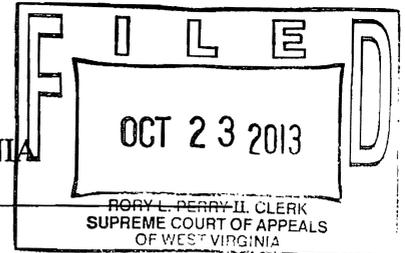


No. 13-0467

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



MARK B. OWEN,

Respondent below, Petitioner herein,

v.

(Civil Action No. 11-D-543-5)

TINA M. OWEN,

Petitioner below, Respondent herein.

FROM THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
THE HONORABLE JAMES A. MATISH

**REPLY OF PETITIONER, MARK B. OWEN,
IN SUPPORT OF PETITION FOR APPEAL**

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TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA

ASSIGNMENTS OF ERROR

Pursuant to Rules 10(d) and (g) of the West Virginia Rules of Appellate Procedure, Mr. Owen incorporates herein, by reference, as if fully set forth, those assignments of error contained within his Brief in Support of Petition for Appeal.

STATEMENT OF THE CASE

Pursuant to Rules 10(d) and (g) of the West Virginia Rules of Appellate Procedure, Mr. Owen incorporates herein, by reference, the Statement of Case contained within his July 26, 2013 Brief in Support of Petition for Appeal.

SUMMARY OF ARGUMENT

Pursuant to Rule 10(g) of the West Virginia Rules of Appellate Procedure, Mr. Owen incorporates, by reference, the Summary of Argument contained within his July 26, 2013 Brief in Support of Petition for Appeal and divides his argument below into appropriate topic headings in accordance with Rule 10(g).

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rules 10(c)(6) and 18 of the West Virginia Rules of Appellate Procedure, Mr. Owen requests that this Court grant him the opportunity to present oral argument on the issues herein. Oral argument is necessary, pursuant to the requirements listed in Rule 18(a) of the West Virginia Rules of Appellate Procedure. The parties have not waived oral argument. W. Va. R. App. P. 18(a)(1). The issues presented in this appeal are not frivolous, and are of critical importance in the area of domestic relations, particularly with respect to prenuptial agreements and their effect on future equitable distribution determinations. W. Va. R. App. P. 18(a)(2). Though authoritative decisions exist relative to prenuptial agreements, an analysis of the requisite knowledge of the contents and effects of those agreements and on a parties' reliance upon such agreements when determining later equitable distribution decisions is warranted, and Mr. Owen

respectfully disagrees with Ms. Owen's position that it is not. W. Va. R. App. P. 18(a)(3). Though the issues and documentary evidence are fully presented in the brief, the decisional process will necessarily be aided by oral argument, as it is anticipated the Court may have specific questions concerning the factual development; this case is quite complex, with a long and convoluted factual and procedural history, which warrants oral argument, contrary to Ms. Owen's assertions. W. Va. R. App. P. 18(a)(4).

As such, Mr. Owen respectfully requests the opportunity to present a Rule 19 oral argument as this case involves assignments of error in the application of settled law, the unsustainable exercise of discretion where the law governing the discretion is settled, and a result against the great weight of the evidence presented to the family court. W. Va. R. App. P. 19(a)(1)-(3).

ARGUMENT

I. The Parties' Prenuptial Agreement Meets the Requirements of Validity Set Forth in West Virginia's Common Law.

The Parties are in agreement as to the specific syllabus point in Ware v. Ware that must serve as the starting point for the analysis of the validity of the prenuptial agreement

[t]he validity of a prenuptial agreement is dependent upon its valid procurement, which requires its having been executed voluntarily, with knowledge of its content and legal effect, under circumstances free of fraud, duress, or misrepresentation; however, although advice of independent counsel at the time parties enter into a prenuptial agreement helps demonstrate that there has been no fraud, duress or misrepresentation, and that the agreement was entered into knowledgeably and voluntarily, such independent advice of counsel is not a prerequisite to enforceability when the terms of the agreement are understandable to a reasonably intelligent adult and both parties have had the opportunity to consult with independent counsel.

Syl. Pt. 2, Ware v. Ware, 224 W. Va. 599, 687 S.E. 2d 382 (2009) (*quoting* Syl. Pt. 2, Gant v. Gant, 174 W. Va. 740, 329 S.E.2d 106 (1985)). Thus, in considering whether a prenuptial agreement is valid, a court must determine whether it was executed (1) voluntarily; (2) without fraud, duress, or misrepresentation; and, (3) with knowledge of the contents and legal effects. Id. Independent counsel is not required, though it establishes a presumption of validity and helps demonstrate that the three elements of validity were present at the time of execution. Id. at Syl. Pts. 2, 5.

Here, though Ms. Owen makes arguments in her Response that go to the issues of voluntariness, fraud, duress, and coercion, those issues are not before this Court for consideration (though Mr. Owen, out of an abundance of caution, will address those arguments so as not to waive the issues), as the Family Court determined that Ms. Owen executed the agreement voluntarily and without fraud, duress, or misrepresentation, and that specific determination was never appealed to the Circuit Court. Thus, the issue before this Court is whether Ms. Owen had the requisite knowledge of the contents and legal effects of the agreement. As set forth more fully below, Ms. Owen had knowledge of the contents and legal effects, executed the agreement voluntarily, and did not enter into the agreement under conditions of fraud, duress, or coercion.

A. Ms. Owen Signed the Parties' Prenuptial Agreement With Knowledge of its Contents and Legal Effects.

None of the case law at issue specifically defines what is meant by “knowledge of the contents and legal effect.” Certainly, though not in the realm of prenuptial agreements, this Court has recognized that “knowledge” can be either actual or constructive, specific or general. See Mace v. Ford Motor Co., 221 W. Va. 198, 653 S.E.2d 660 (2007); Hannah v. Heeter, 213 W. Va. 704, 584 S.E.2d 560 (2003). The only indication of the knowledge requirement for prenuptial agreements is that an agreement should be understandable to a reasonably intelligent adult. Syl. Pt. 2, Gant v. Gant, 174 W. Va. 740, 329 S.E.2d 106 (1985). Thus, it appears, but is not clear, that only general knowledge is required.

In Gant, the Court enforced the parties' prenuptial agreement after determining it must be understandable to a reasonably intelligent adult. See Id. The Court did not specifically discuss the terms of the agreement and whether they were understandable; however, the agreement is quoted, in its entirety, in Footnote 1. The Gant agreement contained “whereas” clauses indicating the parties' intentions and explaining the rights and waivers of the parties. Id. at FN 1. Certainly, the Gant agreement contains less “legalese” than the agreement at the heart of this case, but that does not mean that Ms. Owen could not have had understood the agreement.

In Pajak, the Court specifically found that the parties' agreement was understandable to a reasonably intelligent adult. Pajak v. Pajak, 182 W. Va. 28, 33, 385 S.E.2d 384, 389 (1989). The Court did not precisely explain why it believed that other than saying that it thought the terms of the agreement comported with the requirement. Id. The full text of the agreement was quoted in the body of the opinion, however, so we can determine the type of language that may be reasonably understandable. Once again, the prenuptial agreement contained "whereas" clauses indicating the parties' intentions. Id. at 30, 386. Unlike the Gant agreement, the Pajak agreement contained a mix of commonly-understood terms and legalese, including seised, dower, homestead, legatees, and devisees. Id. at 30-31, 386-387. Importantly, the usage of the legalese did not affect the determination that the document was understandable to a reasonably intelligent adult. Id. at 33, 389. Though not specifically stated, this likely harks back to the general contract law principle that documents are to be read in their entirety, meaning that the document must be understandable as a whole.

Further, Ms. Owen could not have been "fully advised" of the contents and effects of the agreement by Mr. McMunn without Mr. McMunn engaging in dual representation and actually divesting Ms. Owen of the ability to consult independent counsel. The Family Court based its holding that Ms. Owen did not have the knowledge required on the fact that Mr. McMunn did not review the provisions of the agreement in detail with Ms. Owen and did not provide specific explanation of the rights she was waiving. It is abundantly clear that Mr. McMunn could not have specifically explained Ms. Owen's rights and waivers to her without getting into a similar situation as that in Ware, where the attorney, who had been retained by the husband, fully advised the wife of her legal rights and the consequences of entering into the agreement. Ware, 224 W. Va. at 606, 687 S.E.2d at 389. Mr. McMunn reviewed the document just enough to ensure that Ms. Owen was aware of and understood its terms:

Q: Do you deny that you — that Dave McMunn went over generally what a prenup was?

A: He asked me if I knew what was in a prenup.

Q: And what did you say?

A: He went over what was in the prenup, and I was rehearsed as to what to say.

Q: So, at that point in time, right before signing, Mr. McMunn did go over what was in the prenup with you?

A: It's been thirty years, but I cannot tell you word for word what he said.

Q: I didn't ask you word for word, but he went over generally the terms of the prenup?

A: He asked me if I understood it, and I understood what my husband had told me to say.

Q: Did you or did you not agree with me earlier that he went over the terms of that agreement with you?

A: Not complete terms. I didn't know the words — the wording that was in that prenup.

Q: Did you ask?

A: No, I did not. I was told not to ask questions.

Q: But he went over them with you?

A: He — he went over just general what was in the prenup.

Q: And generally, at that time — correct me if I'm wrong — is there anything about the language... “Mark B. Owen and Tina Womeldorff, and each of them, waive and release any and all rights which either of them may have to alimony.” That's on page four, under the “Release or Marital Rights.”

A: I did not read the prenup, so I did not know that was in there.

Q: But Dave McMunn went over, you said, the basic terms of the prenup.

A: When I was meeting with Dave McMunn, I was kind of turned off so that I didn't ask questions.

A.R. 119:22-121:10. Ms. Owen acknowledged to Mr. McMunn that she understood the document.

But, she acknowledged to Mr. McMunn that she understood the terms of the prenuptial agreement.

A.R. 138:3-7. Any ruling or implication that he should have provided a more detailed explanation of her rights and the consequences of the agreement is directly contradictory to Ware.

Here, though Mr. Owen and Ms. Owen entered into a prenuptial agreement that contained legalese, such terminology does not mean the document was not understandable to Ms. Owen. She was an adult, had nursing training, and worked in a professional setting as an administrative assistant at the local hospital. A.R. 172:22-24. The document was generally explained to her by Mr. McMunn. The Owens' prenuptial agreement was understandable to a reasonably-intelligent adult, including Ms. Owen, and the Family Court's order invalidating the prenuptial agreement based upon a finding that Ms. Owen did not have the requisite knowledge of the contents and effects of the agreement must be reversed.

B. Though the Lower Courts May Have Applied the Correct Domestic Relations Common Law Relative to Prenuptial Agreements, the Lower Courts Needed to Consider and Incorporate Contract Law Principles Within Their Analysis, and the Failure to Apply Contract Law is Reversible Error.

The issues with respect to the application of general contract law simply boil down the understanding the type of knowledge required for a prenuptial agreement and the duties and defenses a party to a contract may assert. We know there is a presumption of invalidity if both parties are not represented and that the agreement must be voluntary, free from fraud, duress or coercion, and understandable to a reasonably intelligent adult, as discussed above. General contract law governs prenuptial agreements and provides the additional information needed to evaluate prenuptial agreements. *See Gant v. Gant*, 329 S.E.2d 106 (1985). Thus, because the body of prenuptial agreement law in West Virginia concerning the requirement of "knowledge of its contents and legal effect" and the actions required of each party does not further elaborate on what is meant by that phrase, general contract law must be considered. It is a firmly-established rule that a party who has signed a contract will be bound by its terms and the knowledge thereof, irrespective of whether the terms thereof were read and fully understood. *See Reddy v. Community Health Found.*, 171 W. Va. 368, 298 S.E.2d 906 (1982); *Southern v. Sine*, 95 W. Va. 634, 123 S.E. 436 (1924). *See also*

Campbell v. Campbell, 2007 Conn. Super. LEXIS 1038 (Apr. 24, 2007); Simeone v. Simeone, 525 Pa. 392, 581 A.2d 162 (1990).

The Family Court made it abundantly clear that it was going to ignore Gant and not even consider any general contract law principles:

The Court: **But we are not under general contract law here. We're just not. There is a body of family law that addresses prenuptial agreements, and I am not going to dissuade you from arguing the contract points. However, the family law precedents would certainly override any general contract law precedents as they do in other areas of the law.**

A.R. 98:20-101:11 (emphasis added). To be clear, it is not Mr. Owen's position that general contract apply to override the presumption rule set forth in Ware. Instead, general contract law must guide courts in determining whether a party has the requisite knowledge of the contents and legal effects, whether a party can avail him or herself of the argument that they did not read an agreement, and whether a party can avail him or herself of willful ignorance, among other things. Mr. Owen's Brief in Support of Petition for Appeal is clear, as is the record below — the Family Court and Circuit Court should have considered general contract law in determining whether, without Mr. McMunn engaging in dual representation, Ms. Owen could understand the contents and effects of the agreement, whether she can successfully avail herself of her refusal to read the document and her willful ignorance of the agreement and Mr. Owen's financial condition. The lower courts' failures to consider general contract law mandate that the decision invalidating the Parties' prenuptial agreement be reversed.

C. Ms. Owen Had the Opportunity to Consult with Independent Counsel Prior to Signing the Agreement, and Any Representation By Mr. Owen to the Contrary Have No Effect on the Validity of the Agreement.

Ms. Owen argues that she did not have the opportunity to consult with an attorney before signing the agreement. Ms. Owen bases this argument on Mr. Owen's alleged statements that Mr. McMunn represented both parties. To be sure, a man's (as it may be in this case) representations to a woman that each is represented by the same attorney does not divest the woman of the opportunity

to consult with independent counsel. See Ware, 224 W. Va. at 606, 687 S.E.2d at 389. Instead, the deciding factor is the attorney's representations to the parties and actions in dealing with the parties. Id.

In Ware, the husband made statements to the wife before signing the agreement that the husband's attorney represented both of their interests; however, this was not the lynchpin for the holding that the wife was divested of the opportunity to seek independent counsel. Id. In Ware, the attorney "led [the wife] to believe that he could represent her interests as well as those of [the husband]," through a Certification of Attorney that provided that the attorney had "fully advised" the wife of her legal rights and of the consequences associated with entering into the prenuptial agreement. Id. Because these statements reasonably led the wife to believe the attorney was representing her interests, she was divested of her right to seek independent counsel. Id.

The circumstances in this case are distinguishable, even if Ms. Owen's allegations regarding Mr. Owen's statements to her are taken as true. Assuming *arguendo*, that Mr. Owen did say Mr. McMunn represented both parties, which Mr. Owen disputes, Mr. McMunn made clear to Ms. Owen that he did not represent her, as recognized by the Family Court in the divorce decree. A.R. 416-417. Thus, Ms. Owen could not have reasonably believed that Mr. McMunn represented her and, thus, was not divested of the opportunity to seek independent counsel. Importantly, financial considerations are not a factor with respect to whether Ms. Owen had the opportunity to seek independent counsel. In fact, at the time of the execution of the agreement, Ms. Owen was employed at United Hospital Center and never even looked into whether she could afford to obtain her own attorney. As Mr. McMunn made clear to Ms. Owen that he only represented Mr. Owen with respect to the prenuptial agreement, Ms. Owen had the opportunity to seek independent counsel and was not divested of that opportunity by any of Mr. Owen's or Mr. McMunn's actions.

D. Ms. Owen Avail Herself of Allegations that She Was Not Provided a Copy of the Agreement Before She Affixed Her Signature Thereon, Did Not the Opportunity to Read the Agreement, and That Her Responses Were Rehearsed.

This Court has previously rejected a wife's attempts to invalidate a prenuptial agreement on the basis of her failure to read the agreement and object to the agreement's terms. *See Pajak*, 182 W. Va. 28, 385 S.E.2d 384. In *Pajak*, the husband's third wife appealed a circuit court decision enforcing the parties' prenuptial agreement following the husband's untimely death. *Id.* at 29, 385. The parties entered into this agreement one day before their wedding, and the wife waived therein any interest she may have in his estate. *Id.* At the time of the execution of the prenuptial agreement, the husband was considerably wealthy and was the sole owner of a furniture business, for which the wife worked prior to the marriage. *Id.* at 31, 387. The agreement was drafted by the husband's attorney, who presented it to the wife one day before the wedding and briefly reviewed the document with her. *Id.* The wife then signed the agreement without reading it. *Id.* The wife maintained that, at the time she signed the agreement, she did not know she could have the agreement reviewed by another lawyer and believed she was not permitted to object to the wording of the agreement. *Id.* On appeal, the wife argued that at the time of the agreement she was not fully informed of the husband's wealth and did not understand or know the meaning of the words and clauses in the prenuptial agreement. *Id.* The court rejected both assignments of error and upheld the circuit court's decision to enforce the prenuptial agreement. *Id.*

With respect to the argument that the wife did not understand the agreement, the wife testified that she made no effort to read the agreement in order to understand it and did not ask to have an independent attorney review it. *Id.* at 32, 388. In ruling that the prenuptial agreement was understandable, the Court found the wife's argument of a lack of understanding unpersuasive in light of her testimony that she did not bother to read it, despite the fact that she also testified she did not know she could have it independently reviewed and believed she was not allowed to object to the wording of the document. *Id.* at 33, 389.

Similarly, Ms. Owen cannot avail herself of the allegations that she did not bother reading the document and was “rehearsed” in her responses to Mr. McMunn. Ms. Owen could have read the agreement before signing the document — she was never denied the ability to do so — she simply chose not to. A.R. 119:13-20. In fact, although Ms. Owen did not read the agreement, Mr. McMunn generally reviewed it with her. In response to questioning about her statements to Mr. McMunn indicating she generally understood the prenuptial agreement, Ms. Owen said she was rehearsed. A.R. 105:11-13. This does not affect the validity of the agreement. Ms. Owen’s failure to ask questions or object to the content of the document is her own fault, even if she did not believe she could. As a matter of public policy, this Court cannot take the position that a prenuptial agreement, or any contract for that matter, is entered into without knowledge if the party against whom it is to be enforced simply fails to read the document, even if it is not provided far in advance of execution; ask questions about it; or object to its terms. Such a position would eviscerate the enforceability of a large number of contractual documents, including those relating to marriage.

E. Ms. Owen Cannot Avail Herself of Complete Ignorance With Respect to Mr. Owen’s Net Worth at the Time of the Signing of the Agreement.

This Court has previously held that

[f]or a pre-nuptial agreement to be enforceable, it is not necessary that before the agreement was executed the parties meticulously disclosed to one another every detail of their financial affairs; it is sufficient if the party against whom the agreement is to be enforced had a general idea of the other party’s financial condition and there was no fraud or concealment that had the effect of inducing the party to be charged into entering an agreement that otherwise would not have been made.

Syl. Pt. 2, Pajak, 182 W. Va. 28, 385 S.E.2d 384. This syllabus point has never been overruled by this Court. With respect to the wife’s assignment of error in Pajak that she did not have enough knowledge of the husband’s estate, the Court observed that the wife received the benefits of marriage during the time between the wedding and the husband’s death, including a good home, provision of a home for her son from a previous relationship, and a vehicle. Id. at 32, 388. The Court also recognized that the husband likely would not have married the wife but for the prenuptial agreement.

Id. In rejecting the wife’s argument that she was unaware of the extent of the husband’s assets, the Court noted that the wife knew the husband owned a number of businesses, had real estate holdings, and lived comfortably. Id. The Court ruled that contrary to the wife’s reading of the law, it is not necessary that both parties execute a detailed, written financial statement in order for a prenuptial agreement to be valid. Id. The Court also based its rejection of the wife’s contentions on the fact that the husband, though he “made no great moment of regaling [the wife] with the details of his holdings,” was not secretive or in any way misled the wife. Id.

Such is the situation presented by the case at hand. Mr. Owen may not have made any great moment of regaling Ms. Owen with the details of his holdings; however, at the time of the marriage, Ms. Owen knew that Mr. Owen was a businessman, had several real estate holdings, and lived comfortably. In fact, at the time of the execution of the prenuptial agreement, the Parties were living together, and Mr. Owen made a disclosure of the value of his estate. There is no evidence that Mr. Owen’s disclosure was in any way fraudulent or secretive. In short, Ms. Owen had a general idea of Mr. Owen’s financial status, and there was no fraud or concealment with respect to the same.

II. Assuming *Arguendo* That the Prenuptial Agreement is Invalid, the Family Court Committed Reversible Error When It Failed to Give Mr. Owen Credit for the Inheritance He Received During the Marriage.

West Virginia Code § 48-1-237(4) defines as separate that “[p]roperty acquired by a party during marriage by gift, bequest, devise, descent or distribution.” W. Va. Code § 48-1-237(4). “Where, during the course of the marriage, one spouse transfers title to his or her separate property into the joint names of both spouses, a presumption that the transferring spouse intended to make a gift of the property to the marital estate is consistent with the principles underlying our equitable distribution statute.” Syl. Pt. 4, Whiting v. Whiting, 183 W. Va. 451, 396 S.E.2d 413 (1990). However, the joint titling gives rise only to a rebuttable presumption, which can be overcome by a showing that the transferring spouse did not intend to transfer the property to joint ownership. Id. at 459.

The Family Court recognized in the Decree of Divorce that Mr. Owen received an inheritance, which would be separate property under the Code and that he “no doubt intended in good faith to use his inheritance to enhance what he believed was his separate property based on the provisions of the prenuptial agreement.” A.R. 878-888. The Family Court also acknowledged that Ms. Owen never presented any rebuttal evidence to dispute the inheritance and that Mr. Owen kept the inheritance in a separate account and used them to pay off the mortgage on a home that was in his name only. A.R. 1218:6-14.

Mr. Owen testified at the final hearing that he inherited stock and cash from his parents in a total amount of \$127,912.06 and real property, bringing the total amount of his inheritance to \$142,912.06 after Mr. Owen received \$15,000.00 from the sale of the real property in 2001. A.R. 1145:10-22, 1146:4-9. Mr. Owen further testified that he sold all of the stock and paid off the mortgage on his home, which was titled only in his name. A.R. 1146:18-24. The \$15,000.00 proceeds from the sale of the real property was deposited into either his checking or savings account, both of which were titled only in his name. A.R. 1147:1-6.

Therefore, taking the Family Court’s own words, Mr. Owen intended in good faith to use his inheritance to enhance what he believed was his separate property based on the prenuptial agreement, and he presented unrefuted evidence regarding the amounts of the separate portions of the inheritance and how he used each. Clearly, according to West Virginia Code § 48-1-237(4), the inheritance was separate property. Thus, the only way he should not get credit for that separate property is if he commingled it by intentionally making a gift to the marital estate by titling it in the names of both parties or otherwise intentionally using it for marital purposes. Whiting, 183 W. Va. 451, 459, 396 S.E.2d 413. The Family Court’s own words show that he did not intend to make a gift to the marital estate. Thus, the Family Court’s decision not to give Mr. Owen credit for the value of his inheritance is reversible error.

III. Assuming *Arguendo* that the Prenuptial Agreement is Invalid, the Family Court Committed Reversible Error When it Failed to Give Mr. Owen Credit for the Value of His Separate Estate Prior to Marriage.

The family court, in valuing the marital estate, failed to deduct Mr. Owen's pre-marital worth of approximately \$94,000.00. Property acquired before marriage or that acquired during marriage in exchange for property acquired before marriage is separate property not subject to equitable distribution. W. Va. Code §§ 48-1-237(1)-(2). Ms. Owen does not present and has never presented any evidence disputing Mr. Owen's pre-marital worth valuation or showing that the pre-marital worth was commingled. In fact, Ms. Owen would bear the burden of proving commingling or that Mr. Owen's worth was not as set forth in the prenuptial agreement. Further, the invalidation of the prenuptial agreement does not, in and of itself, mean that the valuation for the Parties stated therein was incorrect, fraudulent, or misleading.

Mr. Owen testified at the final hearing that he had approximately \$94,000.00 in pre-marital assets, as reflected in the parties' prenuptial agreement. While assets were purchased during the marriage using some of the pre-marital property or proceeds from such pre-marital property, the testimony and record are clear that the assets were not commingled, or, in the case of the Canaan Valley condominium, were not intentionally commingled; thus, any assets purchased during the marriage using the pre-marital assets are still Mr. Owen's separate property. Mr. Owen, given that he had these assets prior to marriage and used them for the purchase of assets that were not marital in nature, is entitled to a deduction from the marital estate of the entire amount of his pre-marital worth of \$94,000.00. The family court's failure to give Mr. Owen (or Ms. Owen, for that matter), a deduction for this pre-marital worth is reversible error.

CONCLUSION

The Family Court committed reversible error when it invalidated the parties' prenuptial agreement. Mr. McMunn did not represent both parties, as acknowledged by the Family Court, and Ms. Owen had knowledge of the contents and effects of the prenuptial agreement. She generally

understood the terms of the agreement, and the language was understandable to a reasonably-intelligent adult. Simply because Mr. McMunn did not fully review the meaning and ramifications of every single provision of the agreement with her does not divest her of this knowledge. In fact, Mr. McMunn could not have ethically reviewed the document with her in such a manner because then he would be acting in such a way that Ms. Owen could have inferred that he represented her interests. Because he acted appropriately in reviewing the document with her but not advising her concerning the document, he did not commit dual representation, and Ms. Owen still had the requisite knowledge to enter into the agreement.

Further, the Family Court erred in failing to give Mr. Owen credit for his inheritance and pre-marital worth. Inheritances and pre-marital worth are separate property according to the West Virginia Code. With respect to the inheritance, it was not commingled and was not given to the marital estate. With respect to Mr. Owen's pre-marital worth, given that he had these assets prior to marriage and used them for the purchase of assets that were not marital in nature, Mr. Owen should receive a credit for those assets, instead of them being lumped in to the marital estate.

WHEREFORE, based upon all the foregoing reasons, the Petitioner, Mark B. Owen, respectfully requests this Honorable Court enter an Order granting his Petition for Appeal and permitting oral argument on said Petition, if the Court deems said oral argument necessary. Additionally, Mr. Owen further requests this Honorable Court enter an Order reversing family court's and circuit court's rulings regarding the invalidation of the parties' pre-nuptial agreement, or, in the alternative, enter an Order reversing the equitable distribution issues regarding his inheritance and pre-marital worth.

Respectfully submitted this 23rd day of October, 2013.

**Petitioner herein, MARK B. OWEN,
By Counsel:**



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CERTIFICATE OF SERVICE

This is to certify that on the 23rd day of October, 2013, I served the foregoing "***REPLY OF PETITIONER, MARK B. OWEN, IN SUPPORT OF PETITION FOR APPEAL***" upon counsel of record via U.S. Mail as follows:

Debra V. Chafin, Esquire
Larry W. Chafin, Esquire
314 South Second Street
Clarksburg, WV 26301
Counsel for Respondent

A handwritten signature in black ink, appearing to read "Allison S. McClure", written over a horizontal line.

Allison S. McClure (WV State Bar #10785)