

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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DENNY HARTON,

Respondent Below, Petitioner

v.

No. 23-ICA-242

TERRI HARTON,

Petitioner Below, Respondent.

PETITIONER'S REPLY BRIEF

**ON APPEAL FROM THE FAMILY COURT OF WOOD COUNTY,
WEST VIRGINIA**

(Civil Action No. 20-D-70)

Submitted by:

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I. TABLE OF AUTHORITIES

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II. ARGUMENT

A. Respondent has conceded that the parties' prenuptial agreement is not invalid due to duress.

Respondent's Brief states as follows on the issue of duress: "After careful consideration and a considerable review of all available case law, the Respondent has chosen not to argue this Assignment of Error."

Rule 10(d) of the West Virginia Rules of Appellate Procedure provides in part that: "If the respondent's brief fails to respond to an assignment of error, the Intermediate Court or the Supreme Court will assume that the respondent agrees with the petitioner's view of the issue."

Accordingly, to the extent that the Family Court relied on the issue of duress to invalidate the parties' prenuptial agreement, this Court should overrule the Family Court on this issue.

B. Respondent's argument now that she did read the agreement is inconsistent with the evidence.

Respondent's Brief does not address or rebut the ample case law discussed in *Petitioner's Brief* regarding a party's

failure to read a contract before signing it. Rather, she now argues that "if the Petitioner's version of these events is accurate - that the Premarital Agreement signed by the Respondent on her wedding day is the same agreement Petitioner originally presented to the Respondent - then Respondent did, in fact, read the agreement that she signed." This statement is contrary to the evidence.

Ms. Harton testified that the issue of a prenuptial agreement first came up in mid-May 2000. She testified that two weeks later Mr. Harton presented her with a two (or three) page document that was on Gas Search letterhead.¹ However, the *Premarital Agreement* at issue here is 12 pages long.

Mr. Harton testified that sometime in 1999, he located a form prenuptial agreement on the internet. According to him, the website required him to answer a number of questions and provide information, and then the website produced an initial draft of the document. See, DVD of 08/12/2022 hearing, at 1:43:50 to 1:46:07. The printed document that was signed by the parties has the year "19____" printed as a date at the beginning of the document and on the signature page on page 7, both of which are stricken through by pen and changed to 2000. Appx., pp. 009 & 015. The number 2000 is also written over the typed documents on

¹Gas Search is the name of the company that Mr. Harton owned before and at the time of the parties' marriage.

the notary's acknowledgment on page 8. Appx., p. 016. Mr. Harton testified that the parties discussed the agreement months before the wedding. See, DVD of 08/12/2022 hearing at 1:44:36.

Both parties admitted that a change was made to the agreement to include language regarding children, although each disputed which party asked for that change. That language appears on pages 3 and 4 of the *Premarital Agreement*, appx., pp. 011 and 012. The language regarding children takes up less than one page.

Ms. Harton admitted more than once that she did not read the document that she ultimately signed. See DVD of 08/12/2022 hearing at 1:00:31, 1:33:18, 1:36:03, and 1:37:31². Respondent falsely claims that Mr. Harton did not dispute that she read the "agreement." Ms. Harton's testimony was that she read a two (or three) page agreement on Gas Search letterhead, and Mr. Harton denied there was ever such a document. See, DVD of 08/12/2022 hearing at 1:45:30.³

²For example, at this juncture in the hearing Ms. Harton says: "I never looked at it. I know it's stupid and I should have looked at it but I never really looked at it."

³Respondent suggests in her brief that if the agreement that she signed was not the "original" agreement that Mr. Harton presented to her, "then the Petitioner had to have placed a completely different agreement in the sealed envelope which he gave her on the day of the wedding. And if that is the case, then it would raise the issues of fraud and or misrepresentation in the procurement of the premarital agreement[.]" *Respondent's Brief*, pp. 10 and 11. This argument was not raised or asserted below. Moreover, Ms. Harton never testified that she was in any

C. The Family Court's comments regarding Paragraphs 8 and 9 of the Premarital Agreement do not render the document not understandable to an adult of reasonable intelligence.

Respondent's Brief takes issue with the fact that paragraphs 8 and 9 of the *Premarital Agreement* were not discussed in *Petitioner's Brief*. Respondent's arguments are misplaced.

Paragraph 8(a) as cited by Respondent provides that:

Each party shall have an equal interest in the property acquired by the parties during the course of the marriage (and which is not merely the result of increase in value of any of the property owned by the parties prior to the marriage, as listed on the attached schedules of property.

In paragraph 34 of the *Final Order Regarding the Validity of Prenuptial Agreement* ("Final Order"), appx, p. 006, the Family Court acknowledges that "[t]he language used appears relatively straightforward on its face."

In paragraph 35 of the *Final Order, id.*, the Family Court similarly finds that quoted language from paragraph 9 of the *Premarital Agreement* "also appears relatively straightforward." This paragraph contains language that "it is agreed and understood that neither party shall (in the event of divorce) seek any relief other than a distribution of their joint property interests or those of property interests acquired during the marriage, in any manner other than as provided by this Agreement."

way prevented from reading the agreement before she signed it.

Paragraph 36 of the *Final Order, id.*, then contains the following statement: "In order for the [Respondent] to make a knowing waiver of her marital rights, the [Respondent] - or an adult of reasonable intelligence - had to understand that by signing the premarital agreement she was waiving all claims to marital property in the event of divorce." This statement is inconsistent with what the document says, as it explicitly provides that the parties will have an "equal interest" in property acquired during their marriage.

The purpose of the *Premarital Agreement*, as with virtually every prenuptial agreement, was to preserve Mr. Harton's premarital assets (including the income from such property and the investments and re-investments of such property) and to provide for a waiver of spousal support. Appx., p. 009. Another stated purpose was to protect "[a]ll property acquired by either party by gift, devise, bequest or inheritance," *id.*, which is already preserved as separate property under West Virginia law. See, W. Va. Code § 48-1-237(4).

The *Premarital Agreement* clearly and in plain English defines what property is to be excluded from the marital estate. Thus, any property not so excluded would necessarily constitute marital property, subject to the presumption of an equal distribution. Nothing in paragraphs 8 or 9 is inconsistent with the provisions that define the parties' separate property.

III. CONCLUSION

For the reasons set forth herein and in *Petitioner's Brief*, Petitioner respectfully requests that this Court vacate the Family Court's *Final Order Regarding the Validity of Prenuptial Agreement* and remand the matter with instructions to enforce the parties' *Premarital Agreement*. Petitioner requests such other and further relief as this Court deems just and proper.

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By Counsel

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CERTIFICATE OF SERVICE

I, Mark W. Kelley, an attorney for Respondent DENNY P. HARTON, hereby certify that on August 3, 2023, I served a true and correct copy of the foregoing "**PETITIONER'S REPLY BRIEF**" on the parties via West Virginia File & Serve Xpress, addressed as follows:

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