IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

GEORGE DOWNING, JR.,	:	APPEAL NO. C-220338 TRIAL NO. DR-1900545
Plaintiff-Appellee,	:	
vs.	:	
CAROLYN DOWNING,		*O P I N I O N.*
Defendant-Appellant.	:	

Appeal From: Hamilton County Court of Common Pleas, Domestic Relations Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: August 2, 2023

Michael J. Davis, for Plaintiff-Appellee,

Goldberg Evans LLC and *Shawn M. Evans,* for Defendant-Appellant.

BOCK, Judge.

{¶1} In this appeal, defendant-appellant Carolyn Downing challenges the validity of a prenuptial agreement ("Agreement"),[1] signed by Carolyn and plaintiff-appellee George Downing. For the following reasons, we overrule Carolyn's four assignments of error and affirm the judgment below.

I. Facts and Procedure

{¶2} George and Carolyn married in June 2013. Both previously had been married and had children from those previous marriages. In 2015, Carolyn gave birth to the couple's daughter. Their relationship eventually soured and the two separated in 2019. George filed a complaint for divorce and, relevant here, asserted that "the parties are subject to a prenuptial agreement." Carolyn answered and maintained that the Agreement was invalid and unenforceable.

{¶3} According to the Agreement, George and Carolyn mutually agreed that "[a]ll property, including real or personal property, the income from such property, and the investments and re-investments of such property," as identified in exhibits attached to the Agreement, would remain separate property. They waived any ownership or right to the separate property of the other, including any pension benefits. And they agreed that all income, "earnings[,] and accumulations" during the marriage would remain separate property. Likewise, all savings, investments, retirement accounts, "including any appreciation, income, or other increases to such property" would remain separate property.

[1] The document is titled "Premarital Agreement." Throughout the course of the proceedings, the parties have referred to the Agreement as a prenuptial agreement and antenuptial agreement. These all refer to a contract made "in contemplation, and in consideration, of [George and Carolyn's] future marriage." *See Gross v. Gross*, 11 Ohio St.3d 99, 102, 464 N.E.2d 500 (1984).

{¶4} George and Carolyn each attached a financial information "exhibit" to the Agreement, which identified both parties' categories and amounts of assets and liabilities. The final page contained two signatures, dated May 31, 2013. Carolyn affixed her signature, "verify[ing] that the above information is true and correct to the best of my knowledge."

{¶5} Roughly one year into the litigation, George and Carolyn filed a joint motion asking the court to vacate a hearing on George's motion to enforce the Agreement, explaining that "[t]he parties agree that the antenuptial agreement executed by the parties shall be deemed valid and enforceable in this matter and that the hearing scheduled will not be necessary." But Carolyn eventually hired new counsel and she subsequently moved to withdraw her consent to the joint motion. Rather, she claimed that the Agreement was unconscionable and a product of both fraud and duress.

Hearing on the validity of the Agreement

{¶6} The magistrate held a hearing on the validity of the Agreement. Carolyn, George, and Carolyn's brother John Kallenberger testified.

{¶7} Carolyn described the events leading up to the marriage. According to her, George proposed in early 2013. She described the wedding planning process as rushed. While the Agreement states that it was drafted on April 19, 2013, she had no memory of its creation. Rather, George created it. In fact, she testified that she had no part in creating her financial-disclosure exhibit. She testified that George initiated the discussion of the Agreement and explained that he "trusts absolutely no one." She recalled hesitating because she believed "marriage is based on trust and love."

{¶8} The two continued to discuss the idea of a prenuptial agreement before George presented Carolyn with a copy of the Agreement on "May 19th, the day that I signed it." She also testified that she was first given a copy on May 31. According to Carolyn, the two were arguing when George "said that we could not get married unless I signed this." In tears, she "didn't even read it" and "just signed it and threw it at him." She testified that she was under duress as George was "breathing down [her] throat." Carolyn testified that George "destroyed [the Agreement] in front of me" roughly one year after the wedding. Specifically, he "ripped it up and burned it in a fire pit" in 2014.

{¶9} After the birth of their child, Carolyn quit her job. Initially, she debated resigning from her job when George made clear that she "will not be working for at least six months, the first six months after [their child] is born." She had previously worked as a registered nurse and had managed a staff of approximately 65 nurses. At the time of the hearing, she was working part time as a nurse.

{¶10} Kallenberger, Carolyn's brother, testified that Carolyn was opposed to the idea of the Agreement before the wedding. He recalled asking George on the day of the wedding "what changed?" George answered, "I had to tear up the prenuptial agreement."

{¶11} George offered a different version of events. He testified that the conversation with Kallenberger did not take place. And he recalled drafting the Agreement with Carolyn using a program titled Family Lawyer on his home computer. According to George, "I nor she knew a lot of the legal jargon, but [the program] would ask questions in more of a lay term and just fill in the blanks." He testified that she provided every piece of financial information on the disclosure page.

{¶12} According to George, he provided Carolyn with a copy of the Agreement "a week and a half before she signed it" and disputed Carolyn's testimony that the

wedding was rushed. He recalled that she had the Agreement for roughly one week before he told her "we are going to need to get this done." While "she voiced frustration for the first time then," he asked her again and "[s]he came down from upstairs and threw it on the island and said [t]here, it's signed." And according to George, the two agreed to not consult a lawyer knowing that the Agreement states "you have had an opportunity to have this reviewed by legal counsel." George testified that Carolyn knew he experienced financial issues in his first marriage and that she remarked to him, "I understand why you feel this way and why you would need this [Agreement]." George admitted telling Carolyn he would not marry her unless she signed the Agreement.

{¶13} After the wedding, George recalled that Carolyn asked him to destroy the Agreement "if not daily,[] at least weekly." He "couldn't take hearing about it anymore, so [he] burned a copy, which she said after, you know, that was probably just a copy. And [he was] thinking, hmmm. But, yes, it was a copy." He admitted that he led her to believe that he burned the original.

The magistrate and domestic relations court found the Agreement enforceable.

{¶14} The magistrate determined that the parties' joint motion to vacate the hearing on the motion to enforce the Agreement was "a motion and not an agreed entry," as it was unsigned and not a court order. Next, the magistrate found the Agreement valid and enforceable. First, the magistrate found that Carolyn had "at least nineteen days to read the document and seek legal counsel." Second, both parties disclosed their "financial positions to each other and memorialized them in a Prenup." Third, Carolyn "admitted during cross examination that she didn't read the Prenup and did not seek out an attorney because she wanted to get married and she believed marriage was forever." Carolyn objected to the magistrate's decision.

{¶15} The domestic relations court held oral arguments and overruled

Carolyn's objections. The court concluded that Carolyn had entered into the Agreement "freely without fraud, duress, or coercion." Specifically, the court reasoned that both parties are educated, neither party retained counsel, and Carolyn was presented with the Agreement weeks before the marriage and failed to review the document or seek legal advice. In addition, the court found that the financial disclosures were not vague. Finally, the court determined that Carolyn's argument that the provision waiving spousal support was unconscionable lacked evidentiary support.

{¶16} Later, the magistrate conducted a series of hearings to determine property and support and issued an order providing that "the validity of the [Agreement] has been the subject of considerable litigation," and previously had been deemed valid and enforceable. The magistrate awarded each party the real estate purchased after the date of their separation and determined that the Agreement governed George's business property. The magistrate awarded Carolyn and George their bank accounts free and clear of any interest of the other party. The magistrate found that Carolyn was unable to put money toward a retirement fund as she cared for their daughter and awarded her $20,000 for her retirement account. Further, the magistrate ordered George to pay $1,047.01 in monthly child support payments. Carolyn objected and challenged the validity of the Agreement.

{¶17} The domestic relations court adopted the magistrate's decision. Relevant here, the court explained that Carolyn attempted to raise arguments that the domestic relations court had previously addressed and already "found the [Agreement] valid in an Entry on Objections entered July 1, 2021. Pursuant to the doctrine of res judicata, the Court will not be ruling on these issues again."

II. Law and Analysis

{¶18} Carolyn appeals, raising four assignments of error. First, she claims that she did not sign the Agreement and it is therefore unenforceable. Second, she maintains that the Agreement was the product of fraud, duress, coercion, and overreaching. Third, she asserts that the Agreement was unenforceable because it did not contain sufficient financial disclosures. Fourth, she contends that the spousal support provision in the Agreement is unconscionable.

{¶19} We begin with general principles governing the Agreement. Premarital agreements are "contract[s] entered into in contemplation and consideration of a future marriage wherein the property rights and economic interests of either prospective spouse, or both, are determined and set forth." *Fordeley v. Fordeley*, 2023-Ohio-261, 207 N.E.3d 105, ¶ 16 (11th Dist.), citing *Gross v. Gross*, 11 Ohio St.3d 99, 102, 464 N.E.2d 500 (1984). Therefore, contract law governs the "interpretation and application" of premarital agreements. *Fletcher v. Fletcher*, 68 Ohio St.3d 464, 467, 628 N.E.2d 1343 (1994), citing 2 Williston on Contracts, Section 270B (3 Ed.1959). But the unique circumstances surrounding the relationship of the contracting parties in a premarital agreement requires "special rules" that govern the enforcement of these agreements. *Beverly v. Parilla*, 165 Ohio App.3d 802, 2006-Ohio-1286, 848 N.E.2d 881, ¶ 22 (7th Dist.), citing *Fletcher* at 467.

{¶20} Marriage begins a fiduciary relationship between the parties, so the execution of a premarital agreement requires "good faith, with a high degree of fairness and disclosure of all circumstances which materially bear on the [premarital] agreement." *Gross* at 108. Premarital agreements are enforceable "(1) if they have been entered into freely without fraud, duress, coercion, or overreaching; (2) if there was full disclosure, or full knowledge and understanding of the nature, value and extent of

the prospective spouse's property; and (3) if the terms do not promote or encourage divorce or profiteering by divorce." *Id.* at paragraph one of the syllabus. This three-part test was developed "to ensure that the economically superior party, who typically proposes the antenuptial agreement, does not take unfair advantage of his or her prospective spouse." *Fletcher* at 467.

{¶21} When reviewing a trial court's determination of the validity of a prenuptial agreement, this court upholds the trial court's findings "if they are supported by competent evidence." *Menkhaus v. Menkhaus*, 1st Dist. Hamilton Nos. C-210219, C-210430, 2022-Ohio-2369, ¶ 28, quoting *Gearheart v. Cooper*, 1st Dist. Hamilton Nos. C-050532, C-060170, 2007-Ohio-25, ¶ 15. Moreover, this court "will indulge all reasonable presumptions consistent with the record in favor of [the trial court's] decisions on questions of law." *Fletcher* at 468.

A. Carolyn Signed the Agreement.

{¶22} Carolyn's first assignment of error argues that the Agreement is unsigned and therefore unenforceable for two reasons. First, she contends that the contract was never formed. Second, she argues that the Agreement was barred by the statute of frauds.

1. Waiver.

{¶23} As an initial matter, George argues that Carolyn waived any argument that the Agreement is unsigned and therefore unenforceable. This case was referred to a magistrate and Civ.R. 53(D)(3)(b)(iv) provides that "[a] party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion." Objections "shall be specific and state with particularity all grounds for objections." Civ.R. 53(D)(3)(b)(ii).

{¶24} The magistrate found that Carolyn "signed the agreement well before marriage [sic]." Carolyn objected and relied on her testimony to argue that she "explained how she reluctantly signed an unnumbered verification page." In other words, she maintained that she did not sign the Agreement. We find that this objection sufficiently preserved her contract-formation argument on appeal.

{¶25} But we come to the opposite conclusion regarding her statute of frauds argument for two reasons. Beginning with Civ.R. 8(C), when "pleading to a preceding pleading, a party shall set forth affirmatively * * * *statute of frauds*, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense." (Emphasis added.) Affirmative defenses "must be set forth in an answer or other responsive pleading, and the failure to do so constitutes a waiver." *State ex rel. Bey v. Bur. of Sentence Computation*, 166 Ohio St.3d 497, 2022-Ohio-236, 187 N.E.3d 526, ¶ 17.

{¶26} Carolyn answered George's complaint and "denie[d] the allegation that the alleged Prenuptial Agreement filed by the Plaintiff in this case is valid or unenforceable." But Carolyn failed to set forth the statute of frauds in her answer and waived her right to raise it as a bar to enforcing the Agreement. Further, she failed to raise the statute of frauds in her objections to the magistrate's decision. And "a statute of frauds argument is waived when a party's objections to a magistrate's decision fail to mention the statute of frauds." *See DeHoff v. Veterinary Hosp. Operations of Cent. Ohio, Inc.*, 10th Dist. Franklin No. 02AP-454, 2003-Ohio-3334, ¶ 72.

2. Carolyn admitted that she signed the Agreement.

{¶27} Carolyn argues that the "signatures of the parties do not express assent to the terms of the Premarital Agreement." As a fundamental rule of contracts, an expression of assent that "evinces the intention of the parties" is necessary to form a

contract. *Maddali v. Haverkamp*, 1st Dist. Hamilton No. C-210358, 2022-Ohio-3826, ¶ 47. The "manifestation of mutual assent or a meeting of the minds is a question of fact to be determined from all the relevant facts and circumstances." *Johnson v. Miller*, 12th Dist. Madison No. CA2017-12-021, 2018-Ohio-3739, ¶ 15. " 'We accept the facts found by the trial court on some competent, credible evidence, but freely review application of the law to the facts.' " *Phu Ta v. Chaudhry*, 10th Dist. Franklin No. 15AP-867, 2016-Ohio-4944, ¶ 17, quoting *McSweeney v. Jackson*, 117 Ohio App.3d 623, 632, 691 N.E.2d 303 (4th Dist.1996). And we recognize the "presumption that the findings of the trial court are correct, since the trial judge is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use their observations in weighing the credibility of the proffered testimony." *Id.*, quoting *McSweeney* at 632.

{¶28} Carolyn signed the final page of the Agreement, underneath a provision that "the above information is true and correct to the best of my knowledge." At the hearing, Carolyn was asked when she had first received the Agreement and Carolyn responded, "May 19th, the day that I signed it." She was "upset and emotional, and I was crying and hurt, and so I, like I said earlier, signed it and threw it at him." She testified that George had told her, "without this in place, we weren't getting married." She explained that after the wedding she continued to bring up the Agreement to George because she was unhappy about it. Indeed, she described feeling a wave of relief when George burned the copy of the Agreement. We cannot reconcile this testimony with her assertion on appeal that she never signed the Agreement.

{¶29} Therefore, the record supports the finding that Carolyn signed the Agreement. We overrule Carolyn's first assignment of error.

B. There was no fraud, duress, coercion, or overreaching.

{¶30} In her second assignment of error, Carolyn maintains that the evidence introduced at trial demonstrated that the Agreement was the product of fraud, duress, coercion, and overreach. Therefore, Carolyn argues, the domestic relations court erred when it enforced the Agreement.

{¶31} Premarital agreements are valid and enforceable if entered freely, without fraud, duress, coercion, or overreaching. *Gross,* 11 Ohio St.3d at 105, 646 N.E.2d 500. Fraud, duress, coercion, and overreach are "read with their generally accepted meaning being applicable." *Id.* at 105. In our review of the domestic court's determination of enforceability and validity, we "cannot reweigh the evidence, but instead must uphold the trial court's factual findings when they are supported by competent evidence." *Fordeley*, 11th Dist. Trumbull No. 2018-T-0006, 2020-Ohio-5380, at ¶ 32, citing *Fletcher*, 68 Ohio St.3d at 468, 628 N.E.2d 1343.

{¶32} The domestic relations court explained:

> [Carolyn] entered into the agreement without fraud, duress, or coercion. [Carolyn] was presented with the prenuptial agreement weeks before the parties were married. In fact, a wedding date had not even been set. [Carolyn] had this time to review the document and seek legal counsel, but she failed to do so. [George] also did not have assistance of counsel and therefore had no "upper hand" over [Carolyn]. Both parties are educated and intelligent individuals.

1. The trial court properly found no fraud.

{¶33} Carolyn maintains that the Agreement was the product of constructive fraud. "Constructive fraud often exists where the parties to a contract have a special confidential or fiduciary relationship." *Cohen v. Estate of Cohen*, 23 Ohio St.3d 90,

92, 491 N.E.2d 698 (1986). It "results from the 'failure to disclose facts of a material nature where there exists a duty to speak.' " *Carmen v. Carmen*, 8th Dist. Cuyahoga Nos. 97539 and 97542, 2012-Ohio-3255, ¶ 20, quoting *Layman v. Binns*, 35 Ohio St.3d 176, 178, 519 N.E.2d 642 (1988). In other words, constructive fraud is a " 'a breach of a legal or equitable duty, which, irrespective of moral guilt of the fraud feasor, the law declares fraudulent, because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.' " *Cohen* at 91-92, quoting *Stanley v. Sewell Coal Co.,* 169 W.Va. 72, 76-77, 285 S.E.2d 679 (W.Va.1981).

{¶34} Carolyn need not prove intent because " ' "the law indulges in that assumption of fraud for the protection of valuable social interests based upon an enforced concept of confidence both public and private." ' " *Carmen* at ¶ 19, quoting *Cohen* at 92, quoting *Perlberg v. Perlberg*, 18 Ohio St.2d 55, 58, 247 N.E.2d 306 (1969). For instance, the premarital agreement in *Cohen* provided for monthly support payments to Esther Cohen if her husband was the first to die. *Cohen* at 90. But one year before his death, her husband had already transferred most of his estate to his daughter. *Id.* As the Eighth District explained, this amounted to a complete frustration of "the antenuptial agreement because his remaining estate could not pay the wife $700 per month as promised." *Carmen* at ¶ 36.

{¶35} Carolyn maintains that George misstated his assets and income in the Agreement. Specifically, she argues that the assets and income listed in George's May 2012 bankruptcy petition differ from the assets and income identified by George in the Agreement, which was drafted in April 2013. In the 2012 bankruptcy petition, George identified his annual income as roughly $60,000, but in the 2013 Agreement he listed his annual income as $110,000. In the Agreement, George identified $99,000 worth of assets in the Agreement, including stocks, checking accounts, savings accounts,

retirement plans, and property. The bulk of his assets consisted of $20,000 in household goods and $25,000 in business property.

{¶36} Carolyn asserts that George likely lied to or misled the bankruptcy court, and "it is certain" that he misled Carolyn. But this argument is speculative. And Carolyn repeatedly stated at the hearing that she had not read the Agreement before signing it. It is unclear how George misled Carolyn when she admittedly had not read his financial disclosures. *See Hook v. Hook,* 69 Ohio St.2d 234, 237, 431 N.E.2d 667 (1982) ("Nowhere does it appear appellee was misled concerning the extent of [the] assets. Rather, appellee asserts she did not know the significance of what she was signing."). And as a fundamental rule of contract law, a party cannot defend against the enforcement of a contract by arguing "[s]he did not read it when [s]he signed it, or did not know what it contained." *McAdams v. McAdams*, 80 Ohio St. 232, 241, 88 N.E. 542 (1909).

{¶37} Furthermore, George explained the incongruities between his assets and income on the bankruptcy petition and the Agreement. At the hearing, George testified that his bankruptcy petition was discharged in September 2012, eight months before the Agreement was drafted. He explained that the bankruptcy court did not ask for his business property. And he identified more than $25,000 worth of exempt property in his bankruptcy petition. Thus, competent and credible evidence supports the domestic relations court's determination that the Agreement was executed without fraud.

2. Carolyn did not prove duress or coercion.

{¶38} Carolyn also contends that she signed the Agreement because of duress and coercion. " 'Duress is defined as "[a] condition where one is induced by wrongful act or threat of another to make a contract under circumstances which deprives [her]

of exercise of [her] free will." ' " *Fordeley*, 11th Dist. Trumbull No. 2018-T-0006, 2020-Ohio-5380, at ¶ 27, quoting *Baumgartner v. Baumgartner*, 6th Dist. Lucas No. L-88-032, 1989 Ohio App. LEXIS 2864, 10 (July 21, 1989), quoting *Black's Law Dictionary* 452 (5 Ed.1979). And " '[c]oercion is defined as "where one party is constrained by subjugation to [an]other to do what his free will would refuse." ' " *Id.*, quoting *Baumgartner* at 10, quoting *Black's* at 234.

{¶39} Carolyn maintains that George's ultimatum—that he would not marry her unless she signed the Agreement—was coercive and caused duress. But "[a]n ultimatum does not constitute duress and render a prenuptial agreement unenforceable." *Fordeley* at ¶ 28. Indeed, "[i]f conditioning marriage on a prenuptial agreement constitutes duress, then almost all premarital agreements would be unenforceable." *Id.*, citing *Baumgartner* at 11. Furthermore, Carolyn was provided a copy of the Agreement weeks before the marriage. Therefore, the domestic relations court appropriately found that the duress and coercion did not factor into the execution of the Agreement.

3. Carolyn presented no evidence of overreaching.

{¶40} Carolyn argues that she signed the Agreement due to George's overreaching because she did not understand the document and was given no opportunity to either read the document or consult with legal counsel.

{¶41} A premarital agreement is the product of overreaching when "one party by artifice or cunning, or by significant disparity to understand the nature of the transaction, to outwit or cheat the other," induces its formation. *Gross*, 11 Ohio St.3d at 105, 464 N.E.2d 500. And "[t]he presentation of an agreement a very short time before the wedding ceremony will create a presumption of overreaching or coercion if, in contrast to this case, the postponement of the wedding would cause significant

hardship, embarrassment or emotional stress." *Fletcher*, 68 Ohio St.3d at 470, 628 N.E.2d 1343.

{¶42} Again, when reviewing the domestic relations court's determination regarding the validity and enforcement of a premarital agreement, we must avoid reweighing the evidence and "instead must uphold the trial court's factual findings when they are supported by competent evidence." *Fordeley*, 11th Dist. Trumbell No. 2018-T-0006, 2020-Ohio-5380, at ¶ 32, citing *Fletcher*, 68 Ohio St.3d at 468, 628 N.E.2d 1343.

{¶43} The domestic relations court found no overreach and explained that Carolyn and George are educated and intelligent individuals and Carolyn "had this time to review the document and seek legal counsel, but she failed to do so." In addition, it rejected her argument that George's alleged misrepresentations regarding the destruction of the Agreement, which were made after Carolyn signed the Agreement, was evidence of the Agreement's invalidity. The trial court's findings were supported by competent, credible evidence.

{¶44} George testified that he and Carolyn discussed having the Agreement reviewed by legal counsel and asked Carolyn, "[D]o you want me to print this off when it's done so that you can take it and get it reviewed and we both agreed, no, we don't really need to do that." Further, he testified that he read the Agreement to her, specifically the section providing that she had an opportunity to have it reviewed by legal counsel, "And she said, no, I don't, I don't need that. You're not going to do that, are you?" Likewise, Carolyn testified that she chose to not read the Agreement and not consult with legal counsel. Rather, she signed it because "marriage is forever" and "if it was something my husband insisted on in order to get married, then I just signed

it." This evidence supports the domestic relations court's conclusion that the Agreement was not the product of George's overreaching.

{¶45} The domestic relations court's finding that the Agreement was entered into without fraud, coercion, duress, or overreaching is supported by competent evidence. We overrule Carolyn's second assignment of error.

C. The Agreement includes a full disclosure of assets and liabilities.

{¶46} In her third assignment of error, Carolyn maintains that the Agreement does not include a full disclosure of assets and liabilities by each party.

{¶47} Under the second prong of the *Gross* test, a premarital agreement will be upheld as valid if "there was a full disclosure, or full knowledge, and understanding of the nature, value, and extent of the prospective spouse's property." *Gross,* 11 Ohio St.3d at 105, 464 N.E.2d 500. This requirement can "be satisfied either by the exhibiting of the attachment to the antenuptial agreement of a listing of the assets of the parties to the agreement, or alternatively a showing that there had been a full disclosure by other means." *Id.* We must consider the totality of circumstances " 'to determine whether the required knowledge of assets is present.' " *Gomer v. Gomer*, 2017-Ohio-989, 86 N.E.3d 920, ¶ 12 (6th Dist.), quoting *Vanderbilt v. Vanderbilt*, 9th Dist. Medina Nos. 11CA0103-M and 11CA0104-M, 2013-Ohio-1222, ¶ 10.

{¶48} George's financial disclosures are generalized and not specific. The Agreement, however, states that each party "has full knowledge of the other party's property, debts and income." And Ohio courts "have consistently held that a spouse's general knowledge of the character and extent of the other's wealth and assets is sufficient to validate a premarital agreement." *Gates v. Gates*, 7th Dist. Columbiana No. 06 CO 60, 2007-Ohio-5040, ¶ 56. Full disclosure does not require "a listing of the

property, including bank accounts and values and pension accounts and values, to be attached to the prenuptial agreement." *Id.* at ¶ 63.

{¶49} Carolyn testified that she had no knowledge of the savings accounts, IRA, retirement plans, household goods, or business property that comprised George's assets on the financial disclosure page. Further, she testified that she had no chance to verify those assets. According to Carolyn, "George kept all of that stuff a secret."

{¶50} But George testified that he drafted the Agreement with Carolyn. He explained that they drafted the disclosure forms together: "we were – I was like, well, I got this car. It's probably worth this, and I've got this, and it's probably worth that, and we were kind of guesstimating for each other bouncing information off of each other putting this together." In fact, George testified that without her help in the drafting process, "[t]here is no other way for me to have obtained [her financial information]." Later, he explained that the two discussed finances in an informal manner throughout the drafting process:

> Like, well, hey, remember you have this, and you know, remember you have that, and I'd be going through, okay, I have the Thrift Savings Plan from the Army, and there is the John Hancock Fund from Mid-America Health, and we are just kind of bouncing those numbers off of each other, and I'm doing the same for her. Okay. You've got your TIAA, you know, through Children's. You know, we are just – it's an ongoing communication. It wasn't like a formal, okay, I have a question about this that I'm not sure about. There wasn't anything formal like that.

{¶51} Ultimately, the magistrate heard conflicting testimony about Carolyn's knowledge. The magistrate found that "[t]he parties disclosed their relative financial positions to each other and memorialized them in the [Agreement]." And the magistrate "was in the best position to view the witnesses, observe their demeanor, gestures, voice inflections and use these observations in weighing the credibility of the proffered testimony." *Gates* at ¶ 50, citing *Seasons Coal Co. v. Cleveland,* 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶52} The domestic relations court properly adopted the magistrate's findings because competent and credible evidence supports the finding that Carolyn had full knowledge of George's assets. We overrule the third assignment of error.

D. The Agreement was not rendered unconscionable.

{¶53} In her fourth assignment of error, Carolyn argues that the trial court erred when it enforced the spousal-support provisions of the Agreement because they were rendered unconscionable.

{¶54} When a party challenges on appeal a premarital agreement's spousal-support provisions, we review the "conscionability of the provision at the time of the divorce or separation." *Gross*, 11 Ohio St.3d at 109, 464 N.E.2d 500. A provision may become invalid "by reason of changed circumstances which render the provisions unconscionable as to one or the other at the time of the divorce of the parties." *Id*. The conscionability of a spousal-support provision is "a mixed question of law and fact." *Menkhaus*, 1st Dist. Hamilton Nos. C-210219 and C-210430, 2022-Ohio-2369, at ¶ 39, quoting *Heimann v. Heimann*, 3d Dist. Hancock No. 5-21-11, 2022-Ohio-241, ¶ 53, quoting *Mann v. Mann*, 9th Dist. Lorain No. 09CA009685, 2010-Ohio-1489, ¶ 10. While we afford a trial court's factual findings regarding conscionability great deference, determining whether those facts render the provision unconscionable is a

legal question we review de novo. *Id.*, quoting *Mann* at ¶ 10, quoting *Saari v. Saari*, 9th Dist. Lorain No. 08CA009507, 2009-Ohio-4940, ¶ 11.

{¶55} It is well established that " 'the party claiming unconscionability of a provision for maintenance has the burden of showing the unconscionable effect of the provision at the time of the divorce or dissolution.' " *Menkhaus* at ¶ 37, quoting *Gross* at 109-110. When considering issues of unconscionability, the Ohio Supreme Court has directed courts to consider the statutory factors governing alimony under R.C. 3105.18(B). *Gross* at 110. Under R.C. 3105.18(B), the domestic relations court must "consider all relevant factors," including:

> (1) The parties' relative earning abilities;
>
> (2) The parties' ages and physical and emotional conditions;
>
> (3) The parties' retirement benefits of the parties;
>
> (4) The parties' expectancies and inheritances;
>
> (5) The duration of the marriage;
>
> (6) The extent to which it would be inappropriate for a party who will be the custodian of a minor child of the marriage to seek employment outside the home;
>
> (7) The parties' standard of living established during the marriage;
>
> (8) The relative extent of the parties' education;
>
> (9) The parties' relative assets and liabilities;
>
> (10) The property brought to the marriage by either party; and
>
> (11) The contribution of a spouse as homemaker.

{¶56} And critically, courts must consider " 'whether there are changed circumstances which render the provisions unconscionable as to one or the other at the time of the divorce[.]' " *Vanderbilt*, 9th Dist. Medina No. 13CA0084-M, 2014-

Ohio-3652 at ¶ 7, quoting *Gross* at 9. As such, "the conscionability analysis considers whether a couple's circumstances have changed during the marriage to such a degree that the spouse seeking spousal support should be relieved of the agreement he or she made regarding spousal support." *Id.* And the changed circumstances should be outside of what the parties contemplated at the time of the agreement. *Id.*

{¶57} The Agreement states that, "in the event of a marital separation or dissolution, it is agreed and understood that neither party shall seek or obtain any form of alimony or support from the other, or seek any relief, other than a distribution of their joint property interests of those property interests acquired during the course of the marriage, in any manner other than as provided by this Agreement."

{¶58} The domestic relations court acknowledged that Carolyn argued that the spousal-support provision was unconscionable in her motion to withdraw consent but stated that "there was little to no evidence presented at the hearing as to the unconscionability of waiving spousal support." Following the magistrate's order dividing property and ordering child support, Carolyn objected to the magistrate's denial of spousal support, arguing that the court made no finding of conscionability as provided by *Gross*. The domestic relations court rejected her objection as barred by res judicata.

{¶59} The evidence in the record indicates that Carolyn's employment and earning capacity had not changed to the degree that would render the spousal-support terms in the Agreement unconscionable. She worked full time before her marriage to George, and nothing in the record suggests that her ability to work full time has changed. Certainly, the record indicates that she stopped working during the marriage and cared for their daughter. But the magistrate, as adopted by the domestic relations court, awarded Carolyn "$20,000 to be put towards her retirement" to account for her

unemployment during the marriage. The court also awarded Carolyn the marital residence, which Carolyn had purchased before the marriage, free and clear of any interest of George. And while the court granted George and Carolyn shared parenting of their daughter, it ordered George to pay Carolyn child support.

{¶60} These facts support the domestic relations court's conclusion that Carolyn failed to establish unconscionability. We overrule Carolyn's fourth assignment of error.

III. Conclusion

{¶61} We overrule Carolyn's four assignments of error and affirm the domestic relations court's judgment.

Judgment affirmed.

ZAYAS, P.J., and **WINKLER, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.