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Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI)	
Appellant,)	No.: 83454
vs.)	
PATRICIA EGOSI, N/K/A)	District Court Case No.: D-16-540174-
PATRICIA LEE WOODS,)	D
Respondent.)	

JOINT APPENDIX

VOLUME 11 OF 19

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Patricia Egosi
Plaintiff/Petitioner

v. Youn Egosi
Defendant/Respondent

Case No. D-14-540174-D

Dept. _____

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☒ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: Youn Egosi

Date 3/24/18

Signature of Party or Preparer

[Signature]

JT APPENDIX

Steven D. Grierson

1
2 ORDR
3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 PATRICIA EGOSI,)

8 Plaintiff,)

9 v.)

10 YOAV EGOSI,)

11 Defendant.)

CASE NO. D-16-540174-D
DEPT NO. Q

Dates of Hearing: June 13, 2017
June 14, 2017

12
13
14 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS
15

16 This matter came before the above-entitled Court for evidentiary proceedings on
17 June 13, 2017 and June 14, 2017 on Plaintiff's Notice of Motion and Motion to
18 Invalidate the Prenuptial Agreement, for a Business Valuation, for Spousal Support
19 Arrears, and for Attorney's Fees and Costs (Jan. 5, 2017) (hereinafter referred to as
20 Plaintiff's "Motion to Invalidate"), and Defendant, Yoav Egosi's, Motion to Validate
21 the Prenuptial Agreement (Jun. 9, 2017) (hereinafter referred to as Defendant's
22 "Motion to Validate").¹ Plaintiff, Patricia Egosi (hereinafter "Plaintiff"), appeared with
23
24
25

26 ¹The Court noted the unique circumstances surrounding the scheduling of these
27 evidentiary proceedings in light of the posture of the case. Although custody should be the
28 initial issue adjudicated by the Court, evidentiary hearing dates were moved to accommodate
schedules. Moreover, this Court recognized that the issue of the validity of the Prenuptial
Agreement was hindering and/or stalling discovery efforts. Both parties stipulated to the
manner in which these proceedings were scheduled.

1 her attorney of record, Emily McFarling, Esq., and Defendant, Yoav Egosi, appeared
2 through his attorney of record James Jimmerson, Esq. This Court had the opportunity
3 to consider the evidence admitted at the time of the evidentiary hearing, including the
4 testimony of the witnesses and the documentary evidence offered and admitted into
5 the record.²
6
7

8 The witnesses included: Plaintiff, Defendant, Nicole Rawley, David Plotkin and
9 Shiel Edlin, Esq. This Court had the opportunity to evaluate issues of credibility and
10 demeanor of the witnesses. Based thereon, and good cause appearing, the Court
11 FINDS and CONCLUDES as follows:³
12

13 FINDINGS OF FACT

14 I. The Prenuptial Agreement at issue was executed in Atlanta, Georgia. The
15 validity of the Prenuptial Agreement should be adjudicated under Georgia law pursuant
16 to the terms thereof. Defendant has the burden of proof to validate the terms of the
17 Prenuptial agreement.
18
19

20 ²Certain witnesses were excluded from testifying as a result of "notice" deficiencies that
21 were noted during the hearing. Although the Court offered more latitude with respect to the
22 timeliness of disclosures regarding the admission of documentary proof, objections to the
admission of certain exhibits were sustained.

23 ³This Court has inherent authority to construe and issue its orders. The Court's
24 decision on this matter (including findings and conclusions) was issued orally at the conclusion
25 of the proceedings on June 14, 2017. At that time, Defendant's counsel was directed to
26 prepare the findings, conclusions and orders from the proceedings. Both parties have
27 undergone changes in representation throughout the pendency of this highly contested
28 litigation. Indeed, current counsel for both parties was not involved in these evidentiary
proceedings. Proposed Findings of Fact, Conclusions of Law and Final Order were submitted
to the Court on August 7, 2018. Upon submission, and considering the lengthy delay in
Defendant submitting the same, this Court reviewed the record, including a renewed review
of the evidentiary proceedings. Based upon this review, these Findings of Fact, Conclusions
of Law and Orders are issued.

1
2 2. At prior hearings, this Court offered observations regarding the Prenuptial
3 Agreement based on the offers of proof (on the premise that the offers of proof would
4 be proven at the time of the evidentiary hearing). Based on those offers of proof, this
5 Court issued preliminary orders regarding attorney's fees to be paid by Defendant to
6 Plaintiff in advance of the evidentiary proceedings. Ultimately, the evidence offered
7 by Plaintiff failed to credibly establish the facts set forth in the offers of proof that she
8 had provided the Court in her papers. The offers of proof made through the parties'
9 respective papers (motions, opposition, replies) are important as they relate to the
10 parties' credibility. Those offers of proof tie into some of the factors that this Court
11 is required to consider under Georgia law.
12
13

14 3. Plaintiff made the following offers of proof in her papers:
15

- 16 a. Defendant mentioned to Plaintiff that he wanted a prenuptial
17 agreement;
18 b. Plaintiff did not know the meaning of a prenuptial agreement;
19 c. Plaintiff at first refused to sign a prenuptial agreement;
20 d. The prenuptial agreement was a document that was drafted in its
21 entirety either by Defendant or a representative of Defendant;
22 e. Defendant directed Plaintiff to sign the prenuptial agreement
23 knowing that Plaintiff was not fluent in English and did not have
24 legal counsel;
25 f. Plaintiff was presented the prenuptial agreement on the same date
26 that she signed the prenuptial agreement;
27 g. Plaintiff never spoke to counsel and was not informed that she
28 should retain counsel;
h. Indeed, at the time of signing the prenuptial agreement, Plaintiff
could neither read nor write English; and
i. Plaintiff worked as a stripper, had limited education and worked
for the business as a basic receptionist.

4. As a result of those offers of proof, this Court provided some level of
direction to the parties (or prejudgment of the issues) at hearings held prior to the

1
2 evidentiary hearing. This direction was premised on the evidence supporting the offers
3 of proof. The evidence actually adduced during the evidentiary hearing did not support
4 those offers of proof. Rather, based on the testimony that was offered, and this Court's
5 credibility determinations, this Court finds that:
6

- 7 a. Plaintiff did understand *in general* the meaning of the prenuptial
8 agreement. Further, she understood the nature and purpose of
9 such documents in her homeland of Brazil. Plaintiff had a general
10 understanding of the prenuptial agreement prior to having been
11 presented the same.
12
13 b. There was some involvement and participation by both parties in
14 the drafting of the prenuptial agreement. The form was generated
15 from an internet site both in June and then in August. *See* Exhibits
16 ZZ and LLL. Because Defendant was more familiar with the
17 process, he was the driving force in the preparation of the
18 agreement. It was clear nevertheless that there was information
19 that Plaintiff necessarily provided for the preparation of the
20 prenuptial agreement.
21
22 c. The Court recognizes that English is not Plaintiff's native tongue.
23 She maintains a distinct accent even today. She has developed
24 some fluency in the English language. Plaintiff's fluency or
25 proficiency in English was not as great at the time of the
26 prenuptial agreement as it is today. The Court does not accept
27 Plaintiff's offer, however, that Plaintiff was completely incapable
28 of reading or writing in English. That she could read and write
the English language was demonstrated, in part, by emails written
and sent by Plaintiff to Defendant. It appeared to be "broken"
English in some respects, which is still the case today with respect
to Plaintiff's fluency. Although Plaintiff acknowledged that she
speaks three languages (Spanish, Portuguese and English)
Defendant is more proficient and fluent in the English language
than is Plaintiff.

d. Plaintiff's offer of proof that the first time she saw the prenuptial
agreement was the day she signed the agreement is untrue.
Plaintiff actually did see an agreement that was not materially
different than the one she signed prior to August 2008. The only
changes from the June 2008 draft was the removal of the "child"

1
2 section and the addition of an asset and debt statement. The
3 Court had been led to believe that the first time that Plaintiff saw
4 any prenuptial agreement was in August 2008.

5 e. Prior to executing the agreement, Plaintiff spoke to an attorney
6 licensed to practice law in Florida. That attorney advised Plaintiff
7 not to sign the agreement, despite the fact that Plaintiff alleged
8 (without any corroboration or proof) that the attorney was aligned
9 with Defendant. Although the attorney was the girlfriend of a
10 friend of the Defendant, the credible testimony established that
11 this particular attorney did not think highly of Defendant and
12 advised against signing the agreement. Moreover, Defendant was
13 not aware that the Florida attorney's advice was sought.

14 f. The Florida attorney that advised the Plaintiff about the
15 prenuptial agreement was qualified to give advice in general about
16 prenuptial agreements, and that general advice is sufficient for
17 Plaintiff to understand her rights.

18 g. Plaintiff was educated, having graduated from the equivalent of
19 high school in Brazil and completing three (3) years of college.
20 Although this Court recognizes that the educational systems may
21 be different between countries, the notion that Plaintiff was largely
22 uneducated was not credible. In addition, Plaintiff had more work
23 experience than a mere receptionist.

24 h. Plaintiff worked at the business, Hawk Communication, that was
25 disclosed in the prenuptial agreement, she had access to
26 information concerning the business's finances, was aware of the
27 lifestyle the income generated by the business afforded the parties,
28 was familiar with the home that the Defendant was able to afford
due to the income generated by the business, and therefore had
adequate knowledge of the value of the assets disclosed by the
Defendant.

i. The disclosures made by Defendant were sufficient and timely
because, whether or not full disclosure of a specific dollar amount
attached to each asset was included, it was irrelevant to the
Plaintiff because she was in love, wanted to prove her love to the
Defendant, and it was inconsequential to the Plaintiff whatever
value the Defendant attached to the assets disclosed.

1
2 5. Overall, although this Court has reservations regarding both parties'
3 credibility based on the testimony offered during the evidentiary hearing, Plaintiff's
4 testimony was less credible as to the specific issues before the Court, taking into
5 consideration the offers of proof made by both parties prior thereto.
6

7 6. That the fact that the parties had a minor child during the marriage does
8 not qualify as changed circumstances for purposes of construing the prenuptial
9 agreement.
10

11 CONCLUSIONS OF LAW

12 Based upon the foregoing Findings of Fact, the Court makes its Conclusions of
13 Law as follows:

14 1. The choice of law provision of the prenuptial agreement provides that
15 Georgia law governs the enforcement of the prenuptial agreement. Based on the
16 application of Georgia law, Plaintiff failed to demonstrate that the prenuptial
17 agreement was the result of fraud, duress, mistake, misrepresentation, or non-disclosure
18 of material facts.
19
20

21 2. Under Georgia law, the review of antenuptial or prenuptial agreements is
22 a matter of case law. In this regard, it is not a matter of statutory interpretation. To
23 assist the Court, Defendant offered the testimony of Shiel Edlin, Esq., an attorney
24 licensed in the State of Georgia, regarding the application of Georgia law. Mr. Edlin's
25 testimony provided assistance to the Court in confirming this Court's understanding
26 of Georgia law (as previously briefed by the parties).
27
28

1
2 3. This Court reviewed *Mallen v. Mallen*, 280 Ga. 43, 622 S.E.2d 812
3 (2005), *Alexander v. Alexander*, 279 Ga. 116, 610 S.E.2d 48 (2005), *Kwon v. Kwon*,
4 333 Ga. App. 130, 775 S.E.2d 611 (2015), and *Scherer v. Scherer*, 249 Ga. 635,
5 640(2), 292 S.E.2d 662 (1982). "As a matter of public policy, antenuptial agreements
6 made in contemplation of divorce are not absolutely void in Georgia." *Alexander v.*
7 *Alexander*, 279 Ga. 116, 117, 610 S.E.2d 48, 49 (2005). Unlike Nevada (which has
8 adopted the Uniform Premarital Agreement Act), the review of prenuptial agreements
9 is a matter of case law in Georgia. The court in *Alexander* cited *Scherer v. Scherer*, 249
10 Ga. 635, 640(2), 292 S.E.2d 662 (1982), that identified the three factors or criteria the
11 Court should look at for purposes of determining enforceability. The three criteria
12 included: (1) Whether the agreement was procured by fraud, duress or mistake, or
13 through misrepresentation or nondisclosure of material facts; (2) whether the
14 agreement is unconscionable; and (3) whether facts and circumstances changed since
15 the agreement was executed, so as to make its enforcement unfair and unreasonable.
16 *Id.* at 641(3), 292 S.E.2d 662. Whether an agreement is enforceable in light of these
17 criteria is a decision made in the trial court's sound discretion. *See Adams v. Adams*, 278
18 Ga. 521, 522-523(1), 603 S.E.2d 273 (2004). Under Georgia law there is no specific
19 requirement that a specific list or inventory of assets and debts or an attached financial
20 statement accompany a prenuptial agreement.
21
22
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26 4. Based on the evidence admitted at the time of trial, Defendant satisfied
27 his burden of demonstrating that the prenuptial agreement was not procured by fraud,
28 duress, mistake, or through misrepresentation. This Court's primary concern relates

1
2 to the potential non-disclosure of material facts. In this regard, the disclosure of assets
3 was limited and the timing thereof took place on the date of execution of the
4 agreement. Although Plaintiff had participated in the drafting of the agreement, the
5 disclosure of assets by Defendant was made after this participation. As a matter of
6 equity, this creates a basis under Georgia law to limit the application of the agreement
7 to only those assets specifically disclosed. On the date of execution, there was clearly
8 a disclosure of specific assets that included a condominium located at 2881 Peachtree
9 Road, Unit 1101, Atlanta, Georgia, the 2005 Mercedes SL55AMG, 100% shares of
10 Hawk Communications (dba Joy Phone), and 100% shares of stock in Hawk Voip LLC.
11 Separate debts included \$500,000 and revolving credit of \$130,000. Although there
12 does not appear to be a specific disclosure requirement under Georgia law (such a
13 disclosure is "preferable"), this is an equitable factor that should limit the application
14 of the prenuptial agreement to those specific assets that were disclosed.⁴ With the
15 foregoing limitations, Defendant satisfied his burden to demonstrate that there was
16 sufficient disclosure of material facts.
17
18
19
20

21 5. Based on this Court's findings and conclusions, the prenuptial agreement
22 is not unconscionable – either procedurally unconscionable or substantively
23 unconscionable. From a substantive perspective, protecting and preserving assets
24 owned prior to a marriage and protecting future stream of income is not uncommon or
25

26
27 ⁴Defendant argued that the limited and late disclosure should be disregarded because
28 Plaintiff made it clear that she would have signed the agreement without any disclosure. She
was in love with Defendant and desired to marry him and "prove" her love for him. As a
matter of equity, this Court is not persuaded that Defendant's limited and late disclosure
should be completely disregarded.

1
2 unusual. Indeed, if the Court found or concluded that the terms set forth in the
3 prenuptial agreement were substantively unconscionable, virtually every prenuptial
4 agreement should be voided. Nevertheless, and again taking into consideration the late
5 disclosure of an inventory or listing of assets, such a finding and conclusion is limited
6 to the disclosures attached to the agreement. It is not procedurally unconscionable
7 because there was a separation of time between the first time Plaintiff saw the
8 prenuptial agreement and the time she executed it (a total of six (6) weeks).
9 Considering everything that transpired in between and the fact that the prenuptial
10 agreement did not become enforceable until the parties actually married, it was not
11 procedurally unconscionable.
12
13

14 6. The final prong of the analysis, *supra*, is the burden of proof to
15 demonstrate that taking into account all relevant facts and circumstances, including
16 changes beyond the parties' contemplation when the agreement was executed and
17 enforcement of the antenuptial agreement would be neither unfair nor unreasonable.
18 Pursuant to *Alexander*, *supra*, and the corroborating testimony of Mr. Edlin, this final
19 factor allows the court some discretion. In this regard, the Court has discretion to
20 approve the agreement in whole, in part, or refuse to approve it as a whole.⁵ Defendant
21 has satisfied this burden to the extent that the provisions of the agreement are limited
22 to the preservation as separate property those assets that were specifically disclosed.
23 Additional equitable factors include Defendant's superior financial position at the time
24
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⁵This Court does not find that the fact that the parties had a child (as was the case in *Alexander*) was beyond the contemplation of the parties.

1 of the marriage as well as the fact that, although Plaintiff sufficiently understood the
2 agreement, Defendant had a superior grasp of the terms and language of the prenuptial
3 agreement.
4

5 7. In summary, the only assets the Court views as being protected by the
6 prenuptial agreement are those assets listed in the exhibit attached to the prenuptial
7 agreement. Moreover, the parties have waived the right to pursue spousal support
8 pursuant to the terms of the prenuptial agreement. Nevertheless, the terms of the
9 prenuptial agreement do not preclude the Court from preliminary or temporary
10 support, particularly to the extent the Plaintiff could qualify for public benefits and be
11 a public charge.
12
13

14 Based on the foregoing Findings and Conclusions, and good cause appearing
15 therefore,
16

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the prenuptial
18 agreement is valid *in part*.
19

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only
21 assets protected by the prenuptial agreement are those assets specifically listed in the
22 exhibit attached to the prenuptial agreement.
23

24 ...

25 ...

26 ...

27 ...

28 ...