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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-357 / 00-1281
Filed July 31, 2001

IN THE MATTER OF THE ESTATE OF EUGENE B. INGMAND, Deceased,

FRANCES INGMAND, Claimant,
Appellant.

Appeal from the Iowa District Court for Montgomery County, Gordon C. Abel, Judge.

Frances Ingmand appeals a district court ruling that the prenuptial agreement she signed prior to her marriage to decedent was valid. **AFFIRMED.**

Michael M. Sellers of Sellers Law Office, West Des Moines, for appellant.

Mark D. Swanson of Swanson Law Firm, Red Oak, for appellee Estate.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

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VOGEL, J.

Frances Ingmand appeals a district court ruling upholding the validity of a prenuptial agreement signed by both herself and her late husband, the decedent Eugene Ingmand. We affirm.

Background Facts. Frances Ingmand, a Red Oak resident, and Eugene Ingmand, a retired Red Oak area veterinarian, both widowed, had known each other for some time prior to their March 14, 1986, marriage. When Frances entered the marriage she owned a residence in Red Oak, Iowa, and had approximately $295,000 in other assets. Eugene owned a condominium in Sun City, Arizona, and had approximately $515,000 in other assets. Eugene was familiar with Frances's financial condition, as he had given her financial advice and assisted her with financial management after the death of her first husband. In contrast, Frances was not familiar with Eugene's finances or assets, other than the fact he was "comfortably well off."

On March 10, 1986, Eugene went to the office of a Sun City attorney, William Don Carlos, and requested that Don Carlos prepare a prenuptial agreement. The next day, telling Frances that they were going to procure their marriage license, he drove her to Don Carlos' office. Frances was not aware of the prenuptial agreement, or of Eugene's desire to have the couple sign such a document, until she was presented with it at Don Carlos' office. Eugene then made it clear to Frances that signing the prenuptial agreement was a precondition of their marriage.

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Don Carlos informed Frances that he represented Eugene only, and informed her of the advisability of retaining independent counsel. Neither Don Carlos nor Eugene presented Frances with a summary of the agreement or discussed its terms with her. Frances looked at the agreement and appended lists of the parties' assets, and although she admitted she was given an opportunity to read them, she did not recall doing so. Feeling uncomfortable and embarrassed at the prospect of people finding out Eugene was conditioning their marriage on the prenuptial agreement, she signed the agreement in Don Carlos' office. While she could have obtained a copy of the agreement, she did not as she "didn't truly want to get into it any more."

The agreement reserved to each spouse his or her own separate property, income and debt, whether premarital or after-acquired, and waived the other spouse's rights and obligations in the same. It also required each spouse to bear his or her own expenses during the marriage, with some limited exceptions to be paid by Eugene only. After Eugene's death Frances filed an election to take against the will as Eugene's surviving spouse. Eugene's estate denied her election, arguing it was precluded by the prenuptial agreement. The district court concluded the agreement was valid, and Frances appeals.

Scope of Review. As this matter appears to have been tried in equity, our review of the district court's ruling is de novo. *See In re Estate of Spurgeon*, 572 N.W.2d 595, 597 (Iowa 1998).

Validity of the Agreement. As a general rule, prenuptial agreements are favored and should be liberally construed to give effect to the parties' intent. *In*

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re Marriage of Gonzalez, 561 N.W.2d 94, 96 (Iowa Ct. App. 1997). Because the couple is in a relationship of trust and confidence, "the law requires a full and frank disclosure of all matters bearing upon a prenuptial agreement." *Id.* In assessing fairness and validity of the agreement, we apply the following standards:

> The person challenging the agreement must prove its terms are unfair or the person's waiver of rights was not knowing and voluntary. Applying the standard of our recent cases, we hold the terms of an agreement are fair when the provisions of the contract are mutual or the division of property is consistent with the financial condition of the parties at the time of execution. Of course, the affirmative defenses of fraud, duress and undue influence are also available to void a prenuptial agreement, as with any other contract.

In re Marriage of Spiegel, 553 N.W.2d 309, 316 (Iowa 1996). Here, the prenuptial agreement did little more than preserve to each party their independent financial status preceding the marriage and therefore cannot be deemed unfair to either Frances or Eugene.

Frances relies on the case of *In re Marriage of Gonzalez* to support her position that she did not execute the agreement in a knowing and voluntary manner, and *Gonzalez* is similar in some respects to the facts of this case. There we found the wife's waiver of rights was not knowing and voluntary, where the agreement was prepared by the husband's attorney, the wife learned of the agreement's existence only one week before the wedding, the husband explained only a portion of the agreement to the wife while at his attorney's office, and the wife, in apparent reliance on the explanation, did not review the agreement with independent counsel before signing. *In re Gonzalez*, 561 N.W.2d at 97. However, in *Gonzalez*, the husband's explanation, given to the

wife in Spanish, misled the wife into believing the agreement only assured that each spouse would retain their separate homes in Guatemala and Austria. *Id.* The wife was not informed, and did not understand, that the agreement waived her right to certain marital property. *Id.*

Here, there is no indication in the record that either Eugene or Don Carlos attempted to explain the agreement or otherwise influence Frances's understanding of its contents. Rather, Frances was given the option to review the document herself or with separate counsel. Frances then made the decision to sign the document without reading or reviewing it, despite indications that signing the agreement might not be in her best interest.

It appears that Frances was informed of the advisability of obtaining independent legal counsel, not by a single, curt statement, but in multiple admonishments from her husband's attorney, whom Frances felt "was not comfortable with the situation at all." Moreover, her testimony at the hearing demonstrated her awareness of the agreement's general nature and of the implications of its terms. She stated that "it looked – sounded to me like I was going to be left high and dry, without anything," and that she understood Eugene "was not really going to be very generous with . . . how he took care of me." In addition, while Frances may not have had a full understanding of the scope of Eugene's assets, a list of the those assets was attached to the agreement. *See In re Marriage of Spiegel*, 553 N.W.2d 309, 317 (Iowa 1996) (attaching of a list of assets to the agreement a significant factor in assessing whether husband had fully disclosed the nature and extent of assets prior to execution).

Although Frances claims to have been too embarrassed to seek independent counsel or delay the signing of the agreement, this does not render her actions involuntary. *See id.* at 318. For Eugene to somehow trick Frances into going to Don Carlos' office just days before their marriage, and then condition the marriage on her signature, was certainly not laudatory. However, while these actions may be fairly characterized as surprise pressure tactics, they did not negate the knowing and voluntary nature of the execution. *See id.* at 317-318 (finding this type of behavior by one spouse did not constitute fraud, duress or undue influence upon the other). Once Frances was aware of the prenuptial agreement, she was fully capable of reading it, securing a copy, reviewing it with independent counsel, discussing the matter with Eugene, delaying or even declining to sign the agreement. Because under our case law the terms of the agreement were fair, and as Frances knowingly and voluntarily executed the agreement, we affirm the district court's determination that the prenuptial agreement was valid.

AFFIRMED.