

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 10, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP111

Cir. Ct. No. 2006FA456

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

CHARLENE ELOUISE MEIS, F/K/A CHARLENE ELOUISE KORDUS,

PETITIONER-APPELLANT,

V.

RANDALL FRANCIS KORDUS,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marathon County:
LARRY JESKE, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Charlene Meis, formerly Kordus, appeals from a judgment of divorce in which the circuit court determined that a premarital

agreement between Meis and Randall Kordus was procedurally and substantively equitable. Meis claims she did not enter into the premarital agreement voluntarily and freely. She also claims the agreement was unfair upon divorce. We affirm.

BACKGROUND

¶2 The parties were married on April 8, 1993, after living together for three years.¹ They had previously signed a premarital agreement on March 13, 1993, drafted by Kordus's father, attorney Arthur Kordus.² Attached to the agreement were financial disclosure statements dated February 27, 1993.³

¶3 The premarital agreement provided, among other things, that neither party would acquire any interest in the property rights of the other, including increases in value. The agreement also waived maintenance upon divorce and provided that each party would be free from any claim of the other "as though no marriage had ever taken place."

¶4 At the time of the premarital agreement, both parties were employed full time. Kordus remained with the same employer throughout the marriage and built up substantial retirement and investment accounts. Meis had twenty-seven employers from 1994 through 2006. She had minimal retirement and investment accounts both at the time of the marriage and upon divorce.

¹ Meis and Kordus also lived with Kordus's parents for several months. Subsequent to the marriage, Kordus adopted Meis's child from a prior marriage.

² The premarital agreement stated, "Arthur C. Kordus represents only Randall."

³ The financial disclosure statements appended to the premarital agreement indicated Kordus's assets totaled approximately \$120,000 and Meis's assets were less than \$10,000.

¶5 Meis received mental health treatment for a breakdown in 1988, before she began dating Kordus, but never revealed this to him prior to the marriage. Meis again received treatment for mental health issues beginning in 1996. Kordus testified that prior to the marriage, Meis appeared “perfectly normal.”

¶6 Meis commenced a divorce action on August 8, 2006, and requested judgment rendering the premarital agreement void. Based upon the agreement, the family court commissioner denied her motion for temporary relief seeking maintenance and exclusive use of the home, among other things. Meis filed a motion for a de novo hearing, claiming “[t]he competency of the petitioner at the time of the Premarital Agreement was signed is at issue, as is the validity of the Premarital Agreement.” The circuit court denied the motion, stating:

On one hand, it is obvious that Randall has a larger income.⁴ On the other hand, I cannot ignore the fact that the parties signed a premarital agreement that says that both parties waive temporary maintenance. Based on the information provided, it appears that the parties tried to follow the agreement. They kept separate bank accounts. Each had separate responsibility on payment of monthly expenses. Property was titled separately. To me, the greater weight must be given to the premarital agreement. To extract one term (temporary maintenance) and say it should not be enforced does not appear to be fair. Either the whole agreement is enforceable or it is unenforceable. At least, for now, it is a valid contract, and it needs to be enforced. Therefore, it is hereby ordered that there will be no temporary maintenance.

¶7 The final divorce hearing was bifurcated. The first day of trial dealt with the validity of the premarital agreement. In a written decision, the circuit

⁴ The circuit court found Kordus’s “take-home pay” was \$2,804 monthly and Meis’s monthly income was \$1,191.

court determined the agreement was enforceable. The court found “unbelievable” Meis’s testimony that she did not enter into the agreement voluntarily and freely. The court also found that neither Kordus nor his parents understood there was a mental health issue “until well after the Premarital Agreement was signed and the marriage took place.” The court concluded any mental health issues in 1993 did not equate to legal incompetency. The court also determined the agreement was substantively fair at the time of divorce.

¶8 Following a second day of trial, the court issued another written decision, reaffirming the validity of the premarital agreement, denying Meis’s request for maintenance and awarding assets as titled, with the exception of an equitable offset of \$24,000, due to a “fundamental change in Mr. Kordus’[s] duty to support” following the adoption of Meis’s child.⁵ Meis now appeals.

DISCUSSION

¶9 WISCONSIN STAT. § 767.61⁶ provides for division of property in a divorce judgment. Except for gifts or death transfers, the circuit court is required to presume an equality of division but may alter such distribution by consideration of various factors. One such factor is stated in para. (3)(L):

Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be

⁵ The court found Kordus’s net worth at the time of divorce was \$580,000 and Meis’s net worth was \$9,600. Meis does not argue this disparity makes the premarital agreement unfair. Moreover, neither party argues the court’s equitable offset of \$24,000 was erroneous. We therefore do not reach these issues. See *Waushara County v. Graf*, 166 Wis. 2d 442, 451, 480 N.W.2d 16 (1992).

⁶ Reference to Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

¶10 Our supreme court has set forth the following criteria to test whether premarital agreements are equitable under WIS. STAT. § 767.61(3)(L): (1) each spouse made fair and reasonable disclosure to the other of his or her financial status; (2) each spouse entered into the agreement voluntarily and freely; and (3) the provisions of the agreement dividing the property upon divorce are fair to each spouse. *Button v. Button*, 131 Wis. 2d 84, 95-96, 388 N.W.2d 546 (1986). The first two requirements are issues of “procedural fairness,” whereas the third requirement is an issue of “substantive fairness.” *Id.* at 96. Courts must determine substantive fairness on a case by case basis. *Id.* The party challenging the agreement bears the burden to produce evidence and persuade the circuit court of the agreement’s procedural or substantive unfairness. *Id.* at 93-94.

¶11 The statutory test of whether a premarital agreement is equitable leaves enforceability generally to the circuit court’s sense of fairness. *Hengel v. Hengel*, 122 Wis. 2d 737, 744, 365 N.W.2d 16 (Ct. App. 1985). “Discretion is inherent in the test.” *Id.* Our review of a circuit court’s conclusion that an agreement is equitable is therefore limited to whether the court properly exercised its discretion. When we review a discretionary decision, we affirm if the court examined the relevant facts, applied the correct law, and set forth a process of logical reasoning. *Button*, 131 Wis. 2d at 99. Moreover, we accept the factual findings of the circuit court unless clearly erroneous. WIS. STAT. § 805.17(2). When there is conflicting evidence, it is the role of the circuit court, not this court, to resolve the conflicts and determine the witnesses’ credibility and the weight to be given their testimony. *Krejci v. Krejci*, 2003 WI App 160, ¶25, 266 Wis. 2d 284, 667 N.W.2d 780.

¶12 Meis does not dispute the financial disclosure requirement of the *Button* test. However, Meis disputes the remaining two requirements. Regarding the voluntariness requirement, Meis insists she did not voluntarily and freely sign the agreement because the first time she saw the agreement was the day she signed it and she was not previously provided an opportunity to review it. She also claims as a result of her mental illness she could not have signed the agreement voluntarily or freely.

¶13 The circuit court considered these arguments and, based primarily upon credibility, resolved them against Meis. The court concluded, “I do not feel that the petitioner, Charlene [Meis], has presented credible evidence to dislodge the presumption of validity.” The court specifically found Meis “unbelievable.”

¶14 The record contains sufficient support for the court’s findings. Kordus testified the parties discussed a premarital agreement for “a year and a half or more.” They also discussed the agreement with attorney Kordus for over one year.⁷ The circuit court found Kordus’s testimony credible and was entitled to do so. The record also demonstrates that Meis provided a financial disclosure statement on February 27, 1993, two weeks prior to the execution of the agreement on March 13, 1993, and nearly six weeks prior to the marriage on

⁷ Meis does not argue she did not voluntarily and freely enter into the agreement because she did not have her own attorney. We will therefore not address the issue. See *Graf*, 166 Wis. 2d at 451. Nevertheless, the record contains an affidavit from attorney Kordus stating, “[Meis] was advised to hire or retain independent counsel to review the document.” Moreover, Meis signed the premarital agreement, stating: “Prior to executing this AGREEMENT, each party has had the opportunity to consult with an attorney of his/her choice. I, Charlene, have not consulted with an attorney knowingly and voluntarily and hereby acknowledge that I have waived this right by executing this agreement.” Attorney Kordus testified at trial that he explained this provision to Meis.

April 8, 1993. Prior to execution, attorney Kordus also explained the agreement to both parties and answered all their questions.

¶15 Meis also claims she could not have signed the agreement voluntarily or freely because of her mental illness. Although there is evidence of a mental condition that existed prior to the marriage, the record supports the circuit court's conclusion that Meis failed to overcome the presumption of validity. In fact, Meis's medical expert testified it was beyond his ability to form an opinion as to how any of Meis's symptoms of mental illness would affect her ability to make business decisions that were in her best interest. Attorney Kordus testified he "absolutely" believed Meis was competent, and "it was pretty obvious that she knew what was going on." Attorney Kordus also stated, "Oh, she was very intelligent with me. I knew she knew what she was getting into and there was no doubt that she wanted to do this."

¶16 Meis argues in her brief that as a result of not being treated for mental illness or taking medication at the time she signed the agreement, her "symptoms affected her ability to understand the nature and consequences of the premarital agreement." She does not support this statement by reference to record citation, however, and therefore it will not be considered.

¶17 The circuit court concluded it "does not think Ms. [Meis] ever seriously argued that she did not understand the agreement. She just does not want it enforced." The court could reasonably conclude Meis had the knowledge and opportunity to make a meaningful choice about entering into the agreement. The record supports the court's conclusion the agreement was signed voluntarily and freely.

¶18 Meis next insists the agreement was unfair at the time of the divorce because the parties could not foresee the mental health issue, or the resulting multiple employers she would have during the marriage. Meis is essentially arguing the agreement no longer comported with the parties' reasonable expectations due to changed circumstances. *See Button*, 131 Wis. 2d at 98-99. However, Meis does not allege her mental health condition changed during the marriage. To the contrary, her medical expert testified Meis's current condition existed before the marriage. In any event, Meis did not disclose her condition to Kordus prior to the marriage or the premarital agreement. Contrary to Meis's perception, a mental health issue not disclosed to Kordus does not equate to a condition no longer comporting with the parties' reasonable expectations.

¶19 Furthermore, there is no dispute Meis was employed full time and self-supporting at the time of trial. Her medical expert conceded Meis's mental condition was one of but many factors that would go into analyzing Meis's employment history. Meis's assertion that she has "little or no retirement resulting from multiple short term employers" does not, per force, demonstrate that the presumption was unreasonable at the time of the divorce. Therefore, this argument is undeveloped and will not be considered further. *See MCI, Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶20 We conclude a reasonable court could determine the premarital agreement was equitable. In the exercise of discretion, a circuit judge may reach a conclusion that another judge may not reach. Here, the court considered the relevant law, examined the relevant facts and through a process of logical reasoning came to a conclusion a reasonable judge could reach. Therefore, we cannot say the court erroneously exercised its discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

