STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1279

In re the Marriage of: Brenda Kaye Feneis,
n/k/a Brenda Kay Blazek, petitioner,
Respondent,

vs.

James Denis Feneis,
Appellant.

Filed June 6, 2022
Affirmed
Connolly, Judge

Stearns County District Court
File No. 73-FA-20-7896

Jennifer Nixon, Perusse Nixon, PLLC, Maple Grove, Minnesota (for respondent)

Katherine S. Barrett Wiik, Best & Flanagan LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this marital dissolution dispute, appellant-husband challenges the district court's decision that, under the parties' antenuptial agreement, respondent-wife is entitled to half the amount in each of their five joint accounts. Because we see no ambiguity in the agreement and it provides for this division of joint accounts, we affirm.

FACTS

When appellant Jim Feneis, then 61, and respondent Brenda Blazak, then 51, married in 2016, their financial situations differed greatly; appellant's net worth was over $11 million, while respondent's was about $45,000, or the value of her engagement ring. Prior to the marriage, they had negotiated an antenuptial agreement. According to appellant, it was based on the principle that "what's mine is mine, what's yours is yours." Its "primary purpose [was] to alter applicable Minnesota law"; and it did not classify any property as marital property. It provided in relevant part:

> 4.3 Joint Property means Property that is titled in the names of both parties, whether as joint tenants, tenants in common, or otherwise. Joint property includes property which costs in excess of $1,000 that is purchased by both parties together, during the marriage, using Non-Marital Property from each party to purchase the property.
>
> . . . .
>
> 6.1.2 Joint Property of the parties shall be deemed to be one half -Non-Marital Property of each property, and shall be divided equally between the parties, regardless of their respective financial contributions to its acquisition and capital improvement.
>
> . . . .
>
> 6.1.3.1 Any assets acquired during the marriage from both parties' Non-Marital property will be divided equally between the parties. Such assets that cannot be so divided will be sold, and the net proceeds . . . will be distributed equally to each party.

In 2020, respondent wanted a divorce. She contacted an attorney who told her that, for an account to be joint property under the antenuptial agreement, she had to contribute

some of her nonmarital property to that account. Before she left appellant, she made deposits in the five joint accounts, all of which were titled in both parties' names, without informing appellant that she was doing so.

Specifically, in account 1, which had a value of $2,223,499 on May 31, 2021, respondent deposited $1,000; in account 2, which had a value of $361,993 on November 30, 2020, respondent deposited $300; in account 3, which had a value of $450 on November 30, 2020, respondent deposited $500; in account 4, which had a value of $542,401 on May 28, 2021, respondent deposited $475; and in account 5, which had a value of $313,285 on May 28, 2021, respondent deposited $500. Thus, the total worth of the joint accounts was $3,441,626, and respondent's total deposit into those accounts was $2,775.

The stipulated judgment provided that respondent would receive $50,000, a monthly housing stipend of $9,848, and a 1967 Dodge Coronet. Both parties agreed that they were capable of self-support and waived spousal maintenance; they disputed only the division of the five joint accounts. Following a trial, the district court concluded that the joint accounts were joint property within the meaning of the antenuptial agreement and awarded respondent, $1,720,788, or half the value of the joint accounts.[1]

Appellant argues that (1) the accounts were not joint property within the meaning of the antenuptial agreement, (2) the antenuptial agreement required the joint accounts to be divided according to the amount each party contributed to them, and (3) respondent

[1] $1,720,788 is actually half of $3,441,576; the $50 discrepancy between the district court's finding of the collective worth of the accounts and the amount awarded to respondent as half that amount is unexplained and unchallenged.

violated Minn. Stat. § 518.58, subd. 1a (2018) by making deposits in the accounts without letting appellant know.

DECISION

Appellant's first two arguments involve the construction of the parties' antenuptial agreement. An antenuptial agreement "is a type of contract recognized and favored at common law." *Pollack-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998). Contract terms are interpreted "consistent with their plain, ordinary, and popular meaning to give effect to the intention of the parties as it appears from the context of the entire contract." *Kremer v. Kremer*, 912 N.W.2d 617, 626 (Minn. 2018).

1. Meaning of "joint property"

Appellant argues on appeal, as he argued to the district court, that "Joint Property" in the antenuptial agreement includes only real or tangible property and does not include bank accounts or investments. He bases this argument on the second sentence in section 4.3: "Joint property includes property which costs in excess of $1,000 that is purchased by both parties together . . . ." But appellant reads the word "only" into the sentence between the words "includes" and "property."

The district court rejected this reading, relying on *St. Paul Mercury Ins. Co. v. Lexington Ins. Co.*, 78 F.3d 202, 206-07 (5th Cir. 1996) ("We are not convinced that the rule of *expressio unius est exclusio alterius* [the expression of one thing is the exclusion of another] applies in the instant case, as the challenged list of provisions in St. Paul's contract is prefaced by the word 'including,' which is generally given to an expansive reading, even without the additional if not redundant language of 'without limitation.'"); *see also LaMont*

v. Indep. Sch. Dist. No. 728, 814 N.W.2d 14, 19 (Minn. 2012) (noting that "includes" is not "exhaustive or exclusive"); *Peterson v. City of Minneapolis*, 878 N.W.2d 521, 525 (Minn. App. 2016) ("includes" is a "a term of enlargement, not restriction"). The district court found that the antenuptial agreement defines joint property as property that is titled in the names of both parties and provides that assets acquired from both parties' non-marital property will, in the event of dissolution, be divided equally between the parties. We agree that, because the bank accounts are titled in the names of both parties, are assets acquired from both parties' non-marital property, and can be divided equally between the parties, they are joint property within the meaning of the antenuptial agreement.

2. Meaning of "equal division"

Appellant argues that the district court erred in dividing the joint accounts equally between the parties because respondent is unjustly enriched by receiving $1,720,788 instead of the $2,775 she contributed to the accounts. The district court noted that unjust enrichment requires that one party have been illegally or unlawfully enriched by the efforts or obligations of another and concluded that, because respondent "did not act illegally or unlawfully when she deposited funds into accounts titled jointly in her name," unjust enrichment had not occurred.

Moreover, the antenuptial agreement states explicitly that, "regardless of [each party's] financial contributions to its acquisition . . . ," joint property "shall be divided equally between the parties." Appellant argues that this provision is unconscionable, relying on *In re Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. App. 1987) (defining an unconscionable contract as one "such as no man in his senses and not under delusion would

make on the one hand, and as no honest and fair man would accept on the other), *rev. denied* (Minn. Jan. 28, 1988).

But the antenuptial agreement in section 6.5 states that "neither party will present legal arguments to the court that it should determine what a party should receive under applicable law in the absence of this [a]greement as compared to what a party is entitled to receive under the provisions of this [a]greement. The primary purpose of this [a]greement is to alter applicable Minnesota law regarding property rights . . . ." Appellant's argument that the antenuptial agreement is "unconscionable" because it awards respondent far more than she contributed to the accounts is in effect a legal argument presented to the court that it should determine what respondent should receive under applicable law, i.e., the law against unjust enrichment, in the absence of the antenuptial agreement, and the agreement itself prohibits such arguments.

In his reply brief, appellant invokes the Minnesota Multiparty Account Act, stating that "[a] joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions of each to the sums on deposit, unless there is clear and convincing evidence of a different intent." Minn. Stat. § 524.6-.203 (2020).[2] But the stated primary purpose of the antenuptial agreement is "to alter applicable Minnesota law regarding property rights," and both parties agreed in section 6.4 that, in the event of dissolution, they intended to be bound by its terms. Thus, the antenuptial agreement is itself clear and

[2] Neither party mentions this statute in its principal brief; the district court does not mention it in its opinion. Because "[t]he reply brief must be confined to new matter raised in the brief of the respondent," Minn. R. Civ. App. 128.02, subd. 3, this argument is not properly before the panel. It is addressed in the interest of completeness.

convincing evidence of an intent different from the intent that joint accounts would belong to each party in proportion to that party's contribution to the account. Neither party argued that the antenuptial agreement was ambiguous or that they did not understand it.[3]

The district court did not err by equally dividing the joint accounts pursuant to the antenuptial agreement.

3. Minn. Stat. § 518.58, subd. 1a

Appellant argues that respondent violated her duty to him imposed by Minn. Stat. § 518.58, subd. 1a (providing that parties contemplating dissolution have a fiduciary duty to each other to refrain from transferring, encumbering, concealing, or disposing of marital assets except in the usual course of business or for the necessities of life), when she deposited a total of $2,775 of her nonmarital assets into the five accounts to make them joint accounts within the meaning of the antenuptial agreement and did not inform appellant of these deposits.

The district court concluded that the statute does not apply because "the undisputed facts show that [respondent] deposited funds into joint accounts titled in both parties' names . . . [She] didn't hide the deposits; she made them openly." The district court found that respondent's denial that she made the deposits because she was leaving appellant was "not credible," but also concluded that "[i]t matters not whether [respondent] was considering divorce at the time of [her] deposits" because "[t]he [a]antenuptial [a]greement

[3] Appellant argues that, if this court decides sua sponte that the agreement is ambiguous, it should reverse and remand for the presentation of extrinsic evidence as to the parties' conduct and intent. But we see no basis for this court to conclude that the agreement is ambiguous.

does not contain a provision prohibiting the equal division of a joint account if that account was contributed to in anticipation of divorce [and t]here is no requirement that the other party be notified of a deposit into a joint account."

Appellant argues that this conclusion was "clear error" because "[t]he undisputed evidence makes clear that [respondent] violated her statutory duties to [appellant] by acting detrimentally to him financially when contemplating divorce." But the statute does not prohibit any act detrimental to the other party; it prohibits transferring, encumbering, concealing, or disposing of marital assets, and appellant has not shown that respondent did any of those. Moreover, appellant testified that he would have been capable of reviewing the accounts and seeing respondent's deposits at any time, but did not do so.

Finally, appellant argues that respondent received a windfall, but the antenuptial agreement provided that each party retained what that party brought into the marriage and in the event of dissolution would receive half of any joint property, i.e., property to which both parties had contributed. Thus, the windfall to which appellant refers was provided by the antenuptial agreement to which he agreed. Moreover, because the agreement also provided that each party would retain what that party brought into the marriage, appellant retained far more than respondent following the dissolution. *See In re Marriage of Marnach*, No. A09-0379, 2009 WL 4573847, at *6 (Minn. App. Dec. 8, 2009) (holding that spouse who, after a 13-month marriage, received one of eight homes, one of three cars, and $417,000 of the $5,203,000 in assets did not receive a windfall), *rev. denied* (Minn. Feb. 16, 2020).

Affirmed.