

ORIGINAL

IN THE SUPREME COURT OF OHIO

Patricia A. Saari,	:	Supreme Court Case No: 2009-2016
	:	
Appellant,	:	On Appeal from the Lorain County
	:	Court of Appeals, Ninth Appellate
v.	:	District
	:	
Scott L. Saari,	:	Court of Appeals
	:	Case No. 08CA009507
Appellee.	:	

APPELLEE, SCOTT L. SAARI'S, MEMORANDUM IN RESPONSE TO MEMORANDUM
IN SUPPORT OF JURISDICTION OF APPELLANT PATRICIA A. SAARI

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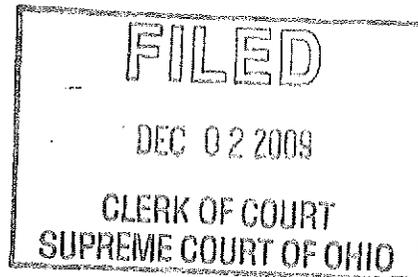


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APPELLEE’S POSITION AS TO WHETHER THIS CASE IS OF
PUBLIC OR GREAT GENERAL INTEREST

This case is not one of public or great general interest and this Court is urged to decline jurisdiction.

Appellant, Patricia Saari, states that “any case in which the findings of a trial judge in a domestic relations matter are disregarded is a matter of public and great general interest.” (Memorandum in Support, p. 1). This is a remarkable statement. Is Appellant’s argument really that this Court should accept jurisdiction in every single domestic relations matter in which the trial court is reversed by a court of appeals? Or, perhaps she is just overreaching while searching for a basis on which this Court could grant jurisdiction.

Appellant’s general argument is that a court of appeals cannot be “permitted to usurp the authority of the trial court in the determination of the evidence....” (Memorandum in Support, p. 2). Yet, this is the very purpose of the courts of appeal—to safeguard litigants from unreasonable and arbitrary decisions of a trial court.

Appellant concedes, as she must, that where there is no competent, credible evidence to support a particular finding of the trial court, the court of appeals is within its right to overturn the trial court (Memorandum in Support, pp. 6-7), which is exactly what happened in this case.

Contrary to what Appellant contends, The Ninth District Court of Appeals did not actually fault the trial court for failing to make sufficient findings of fact. What the Ninth District Court said was that of the eight findings made by the trial court, not one was relevant to the trial court’s stated rationale for its determination that the spousal support provision of the parties’ prenuptial agreement was unconscionable. (Decision and Journal Entry, ¶ 13). Specifically, the appellate court stated, “[o]ur review of the record fails to evince *any* support for

this conclusion or demonstrate that Wife met her burden of proof as to this issue.” (*Id.*) (emphasis added).

There is nothing about this case of public or great general interest. The Ninth District Court of Appeals was well within its authority to reverse the trial court’s decision given the lack of competent, credible evidence in support of its decision. Appellee, Scott Saari, respectfully requests that this Court decline jurisdiction and refuse to hear the case on the merits.

APPELLEE’S RESPONSE TO APPELLANT’S
STATEMENT OF THE CASE AND FACTS

Appellee (hereinafter “Scott”) generally agrees with Appellant’s (hereinafter “Patricia”) statement of the case and facts and so will not restate them here. However, there are two issues where Patricia mischaracterizes the Ninth District’s decision and Scott feels compelled to briefly respond to those.

First, in discussing the appellate court’s reversal of the trial court on the issue of separate property interests, Patricia says that the appellate court “dismissed any consideration of the fact that the prenuptial agreement was ambiguous in its definition of the parties’ separate property interests in the home, a conclusion which the trial court *by inference* had reached....” (Memorandum in Support, p. 4) (emphasis added).

Patricia has argued contract ambiguity *ad nauseum*, but she never mentions the trial court’s own statement during a sidebar on the issue that “[s]o I’m saying, it’s clearly in the document. So, I don’t find it ambiguous.” (Tr. 3, p. 132).

The fact of the matter is that the prenuptial agreement was not ambiguous in its terms regarding separate property interests. And there is no need for Patricia to infer what the trial

court thought as the trial court stated its opinion clearly. For Patricia to state otherwise in her statement of facts is misleading to this Court.

Second, Patricia asserts that the appellate court's decision eviscerates Civil Rule 52 because Scott did not request findings of fact and goes on further to say that the appellate court found "the failure of the trial court to include sufficient findings of fact fatal" to the trial court's decision. (Memorandum in Support, p. 4). This is patently untrue.

When reading the Ninth District's opinion, it is generally clear that the appellate court did not think the trial court was particularly thorough with respect to its findings of fact. However, the Ninth District never approaches a determination that this failure was "fatal" to the trial court's decision. As already stated, the appellate court made it clear that upon its review of the record, there simply was not *any* credible evidence to support the trial court's own stated rationale as to why it found the spousal support provision unconscionable. The Ninth District's decision was not predicated on the trial court's failing to make sufficient findings of fact. And again, for Patricia to state otherwise is misleading to this Court.

APPELLEE'S COUNTERARGUMENT TO
APPELLANT'S PROPOSITION OF LAW

Appellant's proposition of law for this Court to consider is whether, when there has been no request for findings of fact, an appellate court is "bound to defer to the trial court's adjudication of factual issues, where ... the judgment is supported by some competent and credible evidence." (Memorandum in Support, p. 5).

Of course, the problem with Patricia's argument is that there was *no* competent, credible evidence to support her position, as the appellate court stated. (Decision and Journal Entry, ¶ 13-15).

Patricia has broken her argument down into two separate issues and Scott will respond in kind.

1. Unconscionability of Spousal Support Provision

Patricia's argument here is, again, incredibly misleading. She states that Scott had argued "in addressing his fourth assignment of error dealing with the division of property that 'the trial court failed to make any findings of fact.'" (Memorandum in Support, p. 8). It is on this basis that Patricia argues that Scott's failure to request findings of fact pursuant to Civil Rule 52 is what prevents him from raising the spousal support issue on appeal. However, as Patricia said, it was in Scott's *fourth* assignment of error where he raised that issue (and where the trial court was compelled to make findings of fact by statute), not in his *first* assignment of error which is what is at issue here.

In his first assignment of error, Scott did not even make the argument that it was the trial court's failure to make findings of fact that was reversible error as was the case in all of the case law cited by Patricia in her motion. *See, e.g., Pawlus v. Bartrug* (1996), 109 Ohio App.3d 796.

Rather, Scott's argument was that there simply was no evidence to support the trial court's ruling on unconscionability based on the parties relative earning capacities. And without that evidence it was an abuse of discretion for the trial court to rule as it did. The Ninth District agreed and noted that great deference must be given to the trial court's findings of fact. (Decision and Journal Entry, ¶ 11). But, after discussing those factors that the trial court was compelled to consider on the issue of unconscionability per *Gross v. Gross* (1984), 11 Ohio St.3d 99, 109-110 and R.C. 3105.18(C)(1), the court of appeals concluded that there was no evidentiary basis to support the trial court's ruling that it was the parties' relative earning

capacities which led to the unconscionability of the spousal support provision. (Decision and Journal Entry, ¶ 13).

Furthermore, the appellate court concluded that what evidence was presented “favored a finding of conscionability.” (*Id.*, ¶ 14). So, contrary to Patricia’s argument in her Memorandum, the court of appeals found that there was no competent, credible evidence of any change in the parties’ relative earning capacities. It did not simply disregard the evidence or base its ruling on the trial court’s failure to make findings of fact.

In addition, and of note, the Ninth District has since ruled against Patricia on her Application for Reconsideration on this very issue. In its Journal Entry dated November 12, 2009, the Ninth District Court stated the following:

The Supreme Court has held, however, that ‘a trial court’s ruling which recite[s] various facts and a legal conclusion satisfie[s] the requirements of Civ.R. 52, where, when considered together with other parts of the trial court’s record, it form[s] an adequate base upon which to decide the [] legal issue presented. *Stone v. Davis* (1981), 66 Ohio St.2d 74, 85, citing *In re Schoeppner* (1976), 46 Ohio St.2d 21, 23. See, also, *Hurban v. Haas* (Dec. 29, 1999) 9th Dist. No. 2725-M, at *4. In this case, the trial court’s May 12, 2008, decision specifically enumerates its factual findings under a section captioned ‘Facts Established at Oral Hearing.’ Those findings are followed by another section captioned ‘Facts to Law’ in which the trial court stated its legal conclusions based on the facts established at the hearing. The record on appeal also contained the motions upon which the hearing was based, a transcript from the hearing, and the exhibits admitted into evidence at the hearing. Because the court’s decision, together with the record in this case, satisfies Civ.R. 52, it was not necessary for Appellant [Scott Saari] to make such a request under the rule. *Stone*, 66 Ohio St.2d at 85. Moreover, this Court concluded based upon a review of the foregoing, that there was not competent evidence in the record to support the trial court’s judgment. *Saari*, at ¶ 13-15.

Journal Entry, Nov. 12, 2009, pp. 1-2. Thus, Patricia’s argument regarding Scott’s failure to request findings of fact pursuant to Civil Rule 52 is without basis in law.

Patricia also argues at length in her Memorandum that the Ninth District used the wrong standard of review in determining the issues. Yet again, Appellant attempts to mislead the audience.

Patricia argues that the appellate court reviewed the matter *de novo* when it should have given deference to the trial court's factual findings. She cites *Taylor Bldg Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, as proof. (Memorandum in Support, pp. 6-7). But, the *Taylor Bldg. Corp.* case makes it clear that the appropriate standard of review when considering the unconscionability of a contract provision (an arbitration clause in that case) is *de novo*. *Taylor Bldg. Corp.* went on to confirm that when a trial court makes findings of fact supporting its determination, those findings should be reviewed with great deference. *Taylor*, 117 Ohio St.3d at ¶ 37-38. And in fairness to Patricia, she does cite the full standard of review in her Memorandum.

But now consider what happened in this case: The appellate court stated it would review the matter of unconscionability *de novo*, but would review factual findings of the trial court with great deference. (Decision and Journal Entry, ¶ 11). Of great significance is the case cited by the Ninth District to support its statement of the appropriate standard of review: *Taylor Bldg Corp. of Am. v. Benfield*.

Appellee is honestly not even sure what to make of this argument, except the obvious, that it is an attempt, albeit unfounded in law or fact, to get another bite at the apple to which Patricia is simply not entitled.

2. Determination of Scott's Separate Property Interest

Patricia's argument on this issue is one of contract ambiguity and is recycled from both her appellate brief and her motion for reconsideration. The court of appeals rejected it twice and this Court should do likewise.

Patricia has contended throughout that the prenuptial agreement was ambiguous in its terms regarding the value of Scott's separate property interest in the marital home. As stated above in the statement of facts, the trial court stated during a sidebar on the issue that "[s]o I'm saying, it's clearly in the document. So, I don't find it ambiguous." (Tr. 3, p. 132).

The fact of the matter is that the prenuptial agreement was not ambiguous in its terms regarding separate property interests.

As outlined in the Ninth District's Decision, the prenuptial agreement was clear with respect to the parties separate interests as it stated, "[t]he ownership rights of the [p]arties in the [marital] residence shall be in direct proportion to the amount of equity in the residence[,] which shall be determined to be \$66,500 for [H]usband and \$78,100 for [W]ife at [the] date of marriage[.]" (Decision and Journal Entry, ¶ 19).

The Ninth District also made it clear that it would uphold the trial court's findings so long as there was some competent evidence in the record to support them. (*Id.* at ¶ 18). So, it did allow due deference to the trial court contrary to Patricia's contention. However, the court of appeals found that, "[h]aving previously concluded that the prenuptial agreement was valid and enforceable in all respects, it was error for the trial court to substitute its judgment and amend the terms of the contract by awarding Husband a different interest in the marital property than the

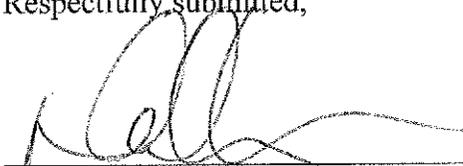
amount the parties had agreed to under its terms[,]" citing, *Gross v. Gross* (1984), 11 Ohio St.3d 99, 108-09.

However, more importantly for this Court's determination is the fact that Appellant presents nothing of public or great general interest in her argument here. She argued in the court of appeals twice that the contract was ambiguous and twice the court of appeals rejected that argument. In doing so, the appellate court operated well within its authority and Appellant has no valid basis on which to invoke this Court's jurisdiction.

CONCLUSION

This case presents nothing of public or great general interest and this Court should deny jurisdiction to hear the case on the merits. Appellant prevailed at trial, but was overturned in the appellate court. In ruling against Patricia, the Ninth District operated within its authority and according to law. While one can understand her disappointment, she simply has no valid basis upon which to invoke this Court's jurisdiction.

Respectfully submitted,

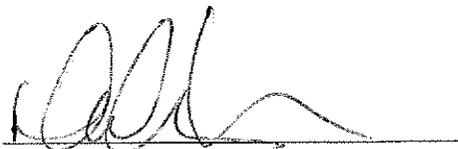


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CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Response to Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for Appellant, Hans C. Kuenzi, Hans C. Kuenzi Co., L.P.A., 1660 West Second Street, Suite 410, Cleveland, Ohio 44113 on November 30, 2009.

A handwritten signature in black ink, appearing to read 'D. Wilcox', written over a horizontal line.

Darlene A. Wilcox

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