

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

IN RE: The Marriage of

CASE NO.: 16-2019-DR-7776-FMXX
DIVISION: FM-G

SAHIBJIT GROVER,
Wife,
and
INDERBIR SINGH
Husband.

**ORDER ON HUSBAND'S MOTION TO DECLARE POSTNUPTIAL AGREEMENT
VALID (Docket #26) WIFE'S VERIFIED MOTION TO DECLARE POSTNUPTIAL
AGREEMENT INVALID AND NON-ENFORCEABLE (Docket #107)**

THIS CAUSE came before this court on September 28, 2021, September 30, 2021 and October 17, 2021 upon the Husband's Motion to Declare Postnuptial Agreement Valid (Docket #26) and Wife's Verified Motion to Declare Postnuptial Agreement Invalid and Non-Enforceable (Docket #107). After reviewing the file, taking evidence from the parties and witnesses, and after counsel presented both oral and written arguments, this Court FINDS:

1. This is an action for dissolution of marriage between the parties, Sahibjit Grover, hereinafter "Wife" and Inderbir Singh, hereinafter "Husband".

2. Husband and Wife were married on December 8, 2002, and this Action was filed on October 22, 2019. The marriage lasted 47-days short of 17 years. Wife is 43 years of age and Husband is 45 years of age.

3. The parties have two children, Jassimar who is currently 16 years of age and a junior in high school and Aamira who is 9 years of age and in the 4th grade.

4. On or about May 28, 2019, the Wife filed a Dissolution of Marriage action, Duval County case number 16-2016-DR-3958-FMXX that was voluntarily dismissed on July 31, 2019. Wife plead for equitable distribution of marital property and alimony.

5. After the dismissal of the parties' original dissolution of marriage case (Duval County case number 16-2016-DR-3958-FMXX), the parties resided in the marital home with their children together.

6. On or about August 28, 2019, the parties executed two (2) identical post-nuptial agreements. The Husband seeks to have these agreements enforced as binding and the Wife seeks to set these agreements aside primarily, but not solely, under Casto v. Casto, 508 So. 2d, 330, (Fla.

1987) and Florida Contract Law.

7. In Casto, the Court held there are two separate grounds by which either spouse may challenge a postnuptial agreement. “First, a spouse may set aside or modify an agreement by establishing that it was reached under fraud, deceit, duress, coercion, misrepresentation, or overreaching.”

8. According to the court in Casto, “the second ground to vacate a settlement agreement contains multiple elements. Initially, the challenging spouse must establish that the agreement makes an unfair or unreasonable provision for that spouse, given the circumstances of the parties. [...] Once the claiming spouse establishes that the agreement is unreasonable, a presumption arises that there was either concealment by the defending spouse or a presumed lack of knowledge by the challenging spouse of the defending spouse’s finances at the time the agreement was reached. The burden then shifts to the defending spouse who may rebut these presumptions by showing that there was either (a) a full frank disclosure to the challenging spouse by the defending spouse before signing of the agreement relative to the value of all the marital property and the income of the parties, or (b) a general and approximate knowledge by the challenging spouse of the character and extent of the marital property sufficient to obtain a value by reasonable means, as well as a general knowledge of the income of the parties.” In the case before the Court while not necessary the Court finds that both grounds under Casto to vacate the postnuptial have been met by the Wife.

9. From the evidence presented, there was clearly no meeting of the minds regarding the Postnuptial Agreement executed by the parties on August 26, 2019. That Wife made a unilateral mistake by executing the agreement, an agreement the Court finds is clearly unconscionable.

10. In addition, the Postnuptial Agreement, executed on August 26, 2019, was procured by fraud, deceit, misrepresentation and overreaching by Husband. The Postnuptial Agreement also makes both unfair and unreasonable provisions for the Husband given the respective circumstances both financial and otherwise of the parties on August 26, 2019 and Husband was not able to rebut the presumption of concealment or Wife’s presumed lack of knowledge of Husband’s finances on August 26, 2019.

11. During the hearing held on September 28, 2021 and September 30, 2021, the Court took extensive testimony from the Wife, Husband, Husband’s counsel, Enrico Zanella, Wife’s former counsel, Christopher T. Wilson, Ms. Nancy Bateh, and Dr. Vance. The Court finds the

Wife's testimony, which was corroborated by hard evidence presented to this Court, regarding the Postnuptial Agreement and history between the parties is far more credible than Husband's testimony.

12. Husband is a sophisticate with an MBA in Management of Information Systems. Husband's undergraduate degree is a BS in computer science. Husband has been employed with UnitedHealth since 2016 and according to Husband's 2018 and 2019 W-2's, his average gross monthly income was \$23,511.05 (\$282,132.59 gross annually) at the time the Postnuptial agreement was executed. Husband argues that the Court should use only his taxable income after pre-taxed deductions or \$20,949.98 gross per month. The difference in the two amounts is in reality inconsequential given the enormous disparity in the parties' incomes.

13. Wife's education comprises of a BA in Music and Arts. Wife principally worked in the childcare/educational industry with sporadic full-time employment early in the party's marriage in California. Wife was primarily a stay-at-home mom since the parties moved to Florida in 2013. According to Wife's 2018 and 2019 W-2's, her average gross monthly income was \$234.69 or \$2,916.28 gross annually. On August 26, 2019, Wife was not employed.

14. Husband handled the finances of the marriage and made most if not all the financial decisions. Wife testified that while she had access to the joint marital account, this account was not where Husband's pay was deposited. Wife was unaware that Husband had separate accounts to include his investment account. Wife did not assist in preparing or reviewing the parties joint tax returns nor did she have access to Husband's pay stubs, W-2's or employment related benefits.

15. The Wife's vision was a focal point of much of the evidence presented to the Court. According to Wife's medical records related to her vision and the testimony of Dr. S. Vance from the Atlantic Eye Institute, Wife is legally blind as defined in Florida Statute §413.021(1). Ms. Nancy Bateh from the Division of Blind Services, Florida Department of Education confirmed the Wife's classification as 'blind' according to the Division of Blind Services, making the Wife eligible for services through the Division.

16. The Postnuptial Agreement is a ten (10) page single spaced document and appears to be in the font "Times New Roman" at 12pt type face. Dr. Vance testified that Wife, at the time of execution, given her medical condition would have been in her medical opinion unable to read the document without reading accommodations and enlarged print of at least 20-22-point typeface. Wife testified that she did not have her reading accommodations at the law offices of Cordell & Cordell on August 26, 2019.

17. During Wife's testimony, this Court observed the difficulty Wife had with reading text on a computer screen when enlarged and even when projected over 200% onto her Counsel's office wall.

18. On August 26, 2019, the parties executed a Postnuptial Agreement at the law offices of Cordell & Cordell. Mr. Enrico Zanella, Esquire was Husband's counsel at the time and Wife was unrepresented. Mr. Zanella apparently did not observe and was not told of the Wife's visual impairment. After leaving Mr. Zanella's office, the Husband drove Wife to a UPS store and executed a second copy of the postnuptial agreement. The terms of the two postnuptial agreements are identical.

19. Husband testified that he reached out to Mr. Zanella to draft the postnuptial agreement just days after the initial dissolution of marriage action (Duval County case number 16-2019-DR-3958-FMXX) was voluntarily dismissed on July 31, 2019. Mr. Zanella testified that he did not send a draft of the postnuptial agreement to either Wife directly or to Mr. Christopher Wilson, Wife's prior attorney in case number 16-2019-DR-3958-FMXX.

20. Wife testified that she was unaware that the parties were in reality executing a postnuptial agreement that ultimately divested her of all marital assets, waived her interest in the marital bank accounts, waived her interest in the Husband's investments and retirement benefits and waived her right to make a claim of spousal support. Wife testified that she was informed by the Husband that the postnuptial agreement was an agreement to strengthen the bonds of marriage. Wife referred to the agreement as a "stability bond". Wife testified that the first mention of reconciliation occurred late Thursday evening, August 22, 2019, approximately four (4) days prior to the document being signed.

21. Wife testified that the first time she was presented the Postnuptial Agreement was on August 26, 2019, at the law offices of Cordell & Cordell, contrary to the testimony of Husband, and further while signing the document on August 26, 2019 that she did not actually review the Postnuptial Agreement until November 2019. Wife further testified that no one read the Postnuptial Agreement to her prior to August 26, 2019 nor on August 26, 2019 when the agreement was executed either at the law offices of Cordell & Cordell or at the UPS store.

22. Husband presented a "draft" postnuptial agreement dated August 20, 2019, that has handwritten changes and initials of both parties next to many of the changes. The changes were in Husband's handwriting, and he testified that it was he himself who wrote the Wife's initials on the document as the parties reviewed the "draft". The Husband testified that on August 20, 2019,

after receiving a copy of the “draft” postnuptial agreement, he and the Wife, together, printed an enlarged copy of the agreement for the Wife’s review. The Husband further testified he witnessed the Wife reviewing the “draft” postnuptial agreement for 2-3 hours utilizing her accommodations and taking notes. Then later August 20, 2019, the parties sat down and reviewed the “draft” for 1.5 – 2 hours together.

23. The Wife vehemently denies ever receiving a copy of the “draft” postnuptial agreement or going over the terms contained therein with Husband. Wife testified that during this timeframe she was the victim of domestic violence on August 19, 2019 and on August 20, 2019 and fled the marital home on the evening of August 20, 2019 with the daughter to a friend’s home for the evening, not returning until the following day with a Jacksonville Sheriff’s Officer to investigate her allegations. Husband admitted that a Jacksonville Sheriff’s officer did come to the marital residence on August 21, 2019 to investigate Wife’s allegations. A Temporary Injunction for Protection was issued on October 17, 2019 and A Final Judgment of Injunction for Protection Against Domestic Violence with minor child(ren) was entered upon full hearing on April 30, 2020, regarding the allegations that occurred on August 19, 2019 and August 20, 2019, case number: 16-2019-DR-2354-DVAX.

24. The parties submitted e-mails and text messages exchanged between the parties as early as July 22, 2019 and ending on August 22, 2019. After reviewing the e-mails and text messages, the Court finds there was no mention of the word alimony or spousal support, the Wife waiving spousal support, the Husband being awarded the marital home or California property, the Wife waiving her interest in the Husband’s income or his retirement accounts, or the Wife waiving her interest in the Husband’s banking or investment accounts. In addition, there was no mention of the parties exchanging financial records, or the Wife waiving her right to review the postnuptial agreement with independent counsel. To the contrary, the emails between the parties show that the Wife desired for her former attorney Mr. Christopher Wilson to review the postnuptial agreement and to be present as at least a witness on August 26, 2019, and the Husband responding and informing the Wife that both are being represented jointly and his attorney will provide the witnesses.

25. The terms being negotiated between the parties through e-mail and text messages were substantially different than those contained in either the “draft” postnuptial agreement dated August 20, 2019 or the Postnuptial Agreement executed on August 26, 2019. It is clear that the parties were not negotiating the same terms and it is clear the Wife did not have knowledge of the

terms contained in either the “draft” postnuptial agreement dated August 20, 2019, or the Postnuptial Agreement executed on August 26, 2019. The evidence also shows that as late as Thursday, August 22, 2019, the parties continued to negotiate on essential terms of an agreement. The terms were not identical to any terms being negotiated, the parties were in essence from the evidence presented negotiating two completely different agreements, and therefore, there was not a “meeting of the minds”. Wife’s testimony was corroborated by hard evidence and is more credible to the Court than the Husband’s. The Husband’s testimony related to Wife’s review and involvement in the negotiations of the Postnuptial Agreement is simply not credible based on a review of all the evidence.

26. The evidence presented by the Wife supports her argument that the Postnuptial Agreement is unconscionable and that she made a unilateral mistake by executing the agreement based on the representations made by the Husband and her trust in the Husband as her fiduciary. Given the positions of the parties and evidence presented it would be inequitable to enforce the postnuptial agreement and the Husband failed to present any evidence that he has changed his position in reliance on the postnuptial agreement. The rescission of the postnuptial agreement would not be unconscionable.

27. It is clear from the evidence presented and testimony of both parties that the Husband knew or should have known the Wife was not aware of the terms contained in the “draft” postnuptial agreement or the Postnuptial Agreement executed on August 26, 2019. The Husband knew that the Wife was walking away with practically nothing and with no financial protection compared to his windfall of marital assets and his having practically no spousal support owed to the Wife. This is a palpable unilateral mistake by the Wife and the Postnuptial Agreement executed on August 26, 2019, is voidable by the Wife.

28. It is also clear from the face of the Postnuptial Agreement that the terms are outrageously unfair to the Wife given the circumstances of the parties. The Wife testified that the “stability bond” or discussions of reconciliation did not arise until late in the evening on Thursday, August 22, 2019. The following Monday, August 26, 2019, the Wife was driven by the Husband to the Husband’s counsel’s office and the Postnuptial Agreement was presented to her for execution. The Wife is legally blind, and no one read the agreement to the Wife and she was just shown where to execute the agreement. The Wife did not read the agreement. The Husband’s counsel testified he was unaware that the Wife was legally blind and did not recognize any obvious reading accommodations in use by the Wife on August 26, 2019. Mr. Zanella testified he

presumed the Wife reviewed the agreement prior to arriving at his office. The testimony would support that the Husband, the Wife's fiduciary, did not inform his counsel that the Wife was blind, nor did he or anyone else read the agreement to the Wife at his counsel's office. The Husband provided no evidence or testimony from any witnesses or notaries present on August 26, 2019, to corroborate his testimony that the Wife had her visual assist accommodations with her and that she read the agreement prior to its execution on August 26, 2019.

29. Given the totality of the circumstances as presented by the parties and Mr. Zanella, the Wife did not have a meaningful choice at the time the Postnuptial Agreement was executed. The Wife, without seeing the agreement prior to its execution did not have a realistic opportunity to bargain over the provisions contained therein and with her vision impairment, she did not have a reasonable opportunity to understand the terms of the agreement. The evidence presented in total indicates the postnuptial agreement and its terms were concealed from the Wife by the Husband prior to the Wife's execution of her signature on the document.

30. After Duval County case number 16-2016-DR-3958-FMXX was dismissed, the testimony and evidence show the Husband knowingly made many false statements, through text, concerning material facts related to the parties' financial circumstances to the Wife in August 2019; the Husband proclaimed that he was demoted, that he is filing bankruptcy, that there is no money, that he cannot afford to pay, he only has \$9,000.00, and that he would have to borrow or do whatever to come up with the money to pay the Wife to name a few. To the contrary, the Wife presented at trial the Husband's bank statements showing withdraws and transfers over \$100,000.00 from March 2019 through August 2019 and that his gross income for 2019 was actually higher than 2018. The Husband discounted his misrepresentations that were made to the Wife in text messages. The evidence shows the Wife, however, relied to her detriment on these misrepresentations when negotiating terms and executing the agreement.

31. While the Wife and the Husband were negotiating on one set of terms, the Husband worked with his counsel preparing the postnuptial agreement that ultimately divested the Wife of all marital assets leaving her nearly destitute and homeless. Between the domestic violence and text messages between the parties in August 2019, there is no real indication that the parties were on the same path to stay married.

32. The Wife testified that late on August 22, 2019, the Husband came to her pleading to reconcile the marriage and that if she agreed he would give her \$26,500.00 if they eventually divorced. The Wife testified she was worried about the effect a divorce would have on the eldest

child, and if she did not agree to reconcile, she would have no place to go. There are no other emails or text messages between the parties until late August 26, 2019.

33. In short, from the evidence, the Court finds the Husband induced the Wife through material misrepresentations, deceit, and fraud into executing the Postnuptial Agreement, an agreement that was being prepared at the Husband's request, behind the Wife's back, just days after the first divorce case was dismissed.

34. From the totality of the circumstances presented to the Court and the credibility of the Wife's testimony, the Postnuptial Agreement executed on August 26, 2019 was procured by fraud, deceit, misrepresentation, duress, coercion, or overreaching by the Husband and should therefore be set aside in its entirety under Casto's first ground to challenge a postnuptial agreement.

35. The testimony of Mr. Zanella and the parties support the fact that no financial disclosures were exchanged through counsel at or near the time the Postnuptial Agreement was executed on August 26, 2019.

36. The Husband relied upon the second subtest of the Casto's second ground to challenge the postnuptial agreement to show the Wife possessed a general and approximate knowledge of the character and extent of the marital property as well as a general knowledge of the incomes of the parties at the time of the agreement. To support this position, the Husband produced the Wife's Financial Affidavit filed in Duval County case number 16-2019-DR-3958-FMXX which showed the parties two (2) real properties and the Husband's vehicle as the three major assets of the parties. Additionally, the Husband produced a screen shot of a financial affidavit allegedly sent to Wife on July 18, 2019, through Whatsapp that was unsigned, not notarized, and not filed in the initial dissolution of marriage action that was voluntarily dismissed, in Duval County case number 16-2019-DR-3958-FMXX. Subsequently, the Husband communicated to the Wife through text messages telling her that he was demoted, that he would have to file bankruptcy, he doesn't have the money, that he can't even pay per previous arrangement monthly, that he has no means financially, and that his income is reduced \$32,000. These text messages, along with other representations made by Mr. Singh, materially alter the alleged July 18, 2019 financial affidavit. The Wife denied ever receiving a copy of the Husband's financial affidavit. The Court finds the Wife's testimony on this point more credible than the Husband's.

37. Thereafter, no financial disclosures were exchanged between the parties. If weighing in the light most favorable to the Husband, the Wife's general knowledge of the marital

assets, and income at the time the postnuptial agreement was executed was minimal at best.

38. The Husband's testimony that the Wife had access to his financial records and that she had access to the online financial accounts, was not credible. The Husband presented an email from 2016 from his current employer that had two attachments indicating his income and benefit package and testified this was forwarded to the Wife. The Wife testified that she did not recall receiving this email in 2016 and that the email did not contain current financial information at the time the agreement was executed.

39. The testimony of the Wife, coupled with the negotiations through email and text messages, can only lead this Court to believe she had at best a slight understanding of the true extent of the Husband's income, employment benefits, and value of the marital estate. There is no credible evidence before this Court that can suggest that the Wife possessed a general or approximate knowledge of the marital assets, liabilities, or the party's income at the time the agreement was executed.

40. The Husband failed to meet his burden of rebutting the presumption that he concealed information from the Wife and that she lacked sufficient knowledge of the Husband's Finances at the time the postnuptial agreement was executed.

41. In summation, The Wife through the evidence presented has successfully challenged the post nuptial agreement between the parties under both grounds as set out under Casto.

The Court finds the agreement was reached under fraud, deceit, duress, coercion, misrepresentation and/or overreaching.

The Court further finds from the evidence the post nuptial agreement by itself made unfair or unreasonable provisions for the Wife given the parties' circumstances. The Court specifically finds the agreement overwhelmingly disproportionate in favor to the financial means of the Husband-the defending spouse, when compared to the Wife's means.

The Husband's evidence lacks credibility and rebuts none of the presumptions established by the Wife.

Wherefore, it is hereby **ORDERED**

A. Wife's Verified Motion to Declare Postnuptial Agreement Invalid and Non-Enforceable (Docket #107) is **GRANTED**.

B. Husband's Motion to Declare Postnuptial Agreement Valid (Docket #26) is **DENIED**.

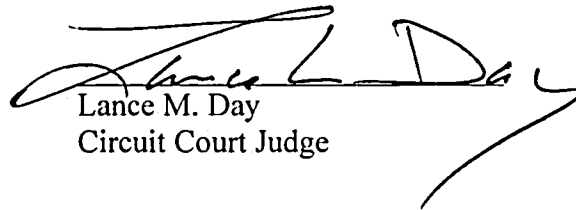
C. Both Postnuptial Agreements executed on August 26, 2019, at the law offices of Cordell & Cordell and at the UPS store are hereby **INVALID** and **VOIDABLE** to Wife and **VOID** to **HUSBAND**.

D. This Court reserves jurisdiction to award Wife attorney's fees and cost.

E. The Court reserves jurisdiction to enforce, amend, or modify this Order as justice so requires.

F. The Court reserves as to all remaining pending issues regarding the parties' dissolution of marriage.

DONE and **ORDERED** in Chambers, at Jacksonville, Florida this 3rd day of December, 2021.



Lance M. Day
Circuit Court Judge

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