

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-1854

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

ELYSE JORANSEN-HAMILTON KNUTSON,

PETITIONER-APPELLANT,

v.

RICHARD C. KNUTSON,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Elyse Joransen-Hamilton Knutson appeals from that portion of a divorce judgment enforcing a premarital agreement that precluded her from receiving any maintenance award. Elyse argues that the trial court

misinterpreted WIS. STAT. § 767.255 and thus erred by enforcing the premarital agreement. Alternatively, Elyse intimates that the agreement is otherwise nullified by the inconsistencies of its own terms. We reject Elyse's arguments and affirm the judgment.

BACKGROUND

¶2 Elyse and Richard Knutson met in September of 1998. They were engaged in October and planned to marry on January 1, 1999. At the time of their engagement, Elyse had been working for approximately six years at Allied Professionals in Edina, Minnesota. In late October, Elyse terminated her employment with Allied in order to plan the wedding and spend time with Richard between his homes in Wisconsin and Florida. At the time she terminated her employment, Elyse was working three-and-a-half days per week and earning a yearly salary of \$40,000.

¶3 At some point after their engagement, Richard informed Elyse that due to the nature of his business, he could not get married without a premarital agreement. The agreement was drafted by Richard's attorney and provided that the parties would maintain separate property and income and further, waived maintenance in the event of divorce during the first five years of marriage. Richard presented the agreement to Elyse on December 21, 1998. It is undisputed that although Elyse knew she had the option of seeking counsel regarding her rights pursuant to the agreement, she ultimately signed the agreement on December 28 without having consulted an attorney.

¶4 The couple married on January 1, 1999. A month later, on February 2, Elyse filed a petition for divorce and challenged the validity of the premarital

agreement. The trial court concluded that the agreement was valid and enforceable against Elyse. This appeal followed.

ANALYSIS

¶5 Elyse argues that the trial court misinterpreted WIS. STAT. § 767.255 and thus erred by enforcing the premarital agreement. The construction of statutes and their application to a particular set of facts are questions of law that we review de novo. *State v. Isaac J.R.*, 220 Wis. 2d 251, 255, 582 N.W.2d 476 (Ct. App. 1998). The aim of statutory construction is to ascertain the legislature's intent, and our first resort is to the statutory language itself. *Id.* If the words of the statute convey the legislative intent, that ends our inquiry; we do not look beyond the statute's plain language to search for other meanings, but simply apply the language to the facts before us. *Id.* at 255-56. It is only when the language of the statute is ambiguous that we examine the statute's scope, history, context, subject matter, and the object in order to ascertain the legislative intent. *Id.* at 256. A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *Id.* Whether a statute is ambiguous is a question of law. *Awve v. Physicians Ins. Co.*, 181 Wis. 2d 815, 822, 512 N.W.2d 216 (Ct. App. 1994).

¶6 WISCONSIN STAT. § 767.255 governs the division of property upon divorce. Although the statute requires the court to presume that certain property shall be divided equally between the parties, it nevertheless authorizes the court to alter this distribution after considering certain factors, including any written agreement between the parties. The statute provides that

any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution ... shall be binding upon the court except ...

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.

WIS. STAT. § 767.255(3)(L). The determination of inequitableness under § 767.255(3)(L) lies within the sound discretion of the trial court. *Button v. Button*, 131 Wis. 2d 84, 99, 388 N.W.2d 546 (1986). We will sustain a trial court's discretionary acts if the court examined the relevant facts, applied a proper standard of law and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. See *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶7 Our supreme court has determined that an agreement is inequitable under WIS. STAT. § 767.255(3)(L) if it fails to satisfy the requirements of both procedural and substantive fairness. *Button*, 131 Wis. 2d at 94. An agreement is equitable only if “each spouse has made fair and reasonable disclosure to the other of his or her financial status; each spouse has entered into the agreement voluntarily and freely; and the substantive provisions of the agreement dividing the property upon divorce are fair to each spouse.” *Id.* at 89. The *Button* court instructed that the first two requirements be assessed as of the time of the execution of the agreement. *Id.* The third requirement, however, is assessed as of the time of the execution of the agreement and, “if circumstances significantly changed since the agreement, then also at the divorce.” *Id.*

¶8 With respect to the first requirement, “an agreement is inequitable if either spouse has not made fair and reasonable disclosure to the other of his or her assets, liabilities and debts.” *Id.* at 95. Here, Elyse testified at trial that in early December 1998, Richard showed her a financial statement indicating his personal worth to be approximately \$5,000,000. In turn, Elyse disclosed her net worth of

approximately \$385,500 to Richard in mid-December. We therefore conclude that the trial court reasonably concluded that there was a fair financial disclosure between the parties.

¶9 The second *Button* requirement addresses whether the agreement was entered into voluntarily and freely, *i.e.* whether each spouse had a meaningful choice. In making this determination, a court should consider “whether each party was represented by independent counsel, whether each party had adequate time to review the agreement, whether the parties understood the terms of the agreement and their effect, and whether the parties understood their financial rights in the absence of an agreement.” *Id.* at 95-96.

¶10 At trial, Elyse testified that upon receipt of the agreement, she did not understand some of its terminology and citation to case law. Elyse, who had received maintenance payments following her divorce from her first husband, nevertheless acknowledged her understanding that under the agreement, each party would leave the marriage with their respective property and she would not be entitled to maintenance should the marriage end within five years. Elyse also testified that although she made a number of attempts to contact an attorney, she ultimately opted to sign the agreement without any advice of counsel, noting that she trusted Richard and relied on his representations that the agreement was a “mere formality” and that they could “negotiate the parts” at some point in the future.¹ Elyse additionally intimated that she felt some pressure to sign the

¹ At trial, Richard acknowledged telling Elyse that the agreement could be modified at some later date; however, he testified that he was referring to doing so when the marriage and living arrangements were “solidified.” In other words, he felt if the marriage worked and the parties had built a life together, then modification of the agreement would be justified. In any event, it is undisputed that after signing the agreement, Elyse never sought to renegotiate its terms nor did she otherwise challenge its validity before filing her petition for divorce.

agreement, given the relative haste at which the wedding day approached. However, a party's statement requiring a marital property agreement as a condition of marriage does not constitute coercion. *Gardner v. Gardner*, 190 Wis. 2d 216, 233, 527 N.W.2d 701 (Ct. App. 1994). The other party is free to leave the relationship if an agreement is objectionable. *Id.* Based on Elyse's testimony, the trial court reasonably concluded that the parties had entered into the agreement freely and voluntarily.

¶11 With respect to the third *Button* requirement, a trial court must assess the substantive fairness of the agreement. In determining substantive fairness, a court must be mindful of the parties' freedom to contract as well as the protection of the parties' financial interests at divorce. *Id.* at 96. To that end, a court must look at the substantive fairness of the agreement as of the time it was made. *Id.* at 97. An agreement that is fair at execution is not unfair at divorce unless "there are significantly changed circumstances after the execution of an agreement and the agreement as applied at divorce no longer comports with the reasonable expectations of the parties." *Id.* at 98-99.

¶12 Here, Elyse contends that the trial court misinterpreted WIS. STAT. § 767.255(3)(L) by failing to assess the substantive fairness of the agreement in light of Elyse's earlier decision to terminate her employment. In essence, she argues that given the fact that she was unemployed and otherwise relying on Richard's assurances that they could "[negotiate] the parts" at a later date, the agreement's denial of any maintenance award was inherently unfair. We are not persuaded.

¶13 A premarital agreement is, "after all, a contract with all of its attendant risks and risk bearing." *Warren v. Warren*, 147 Wis. 2d 704, 710, 433

N.W.2d 295 (Ct. App. 1988). “A person signing a premarital agreement undertakes all the normal anticipated risks that the agreement may not prove to be a wise one.” *Id.* at 711. The *Button* court recognized that “[a]t execution, the parties know their property and other relevant circumstances and are able to make reasonable predictions about the future.” *Button*, 131 Wis. 2d at 97-98. With knowledge of her financial and employment status, as well as general knowledge of the terms of the agreement, Elyse exercised her freedom to contract. It is undisputed that there was no articulable change in circumstances between the date of execution of the premarital agreement and the commencement date of the divorce. Thus, the trial court properly concluded that the substantive provisions of the agreement dividing the property upon divorce were fair to each spouse.

¶14 Finally, Elyse contends that the agreement is otherwise nullified by the inconsistencies of its own terms. The premarital agreement provided, in relevant part:

Both parties are currently employed, and both parties intend to remain employed, in order to stay fully independent and self-supporting both during and after their marriage. The parties acknowledge that they enter into this marriage without any present or future expectation of spousal maintenance. In addition, the parties acknowledge that they have considered and rejected alternative provisions in this agreement that would have provided for temporary (during the pendency of a dissolution proceeding), limited, or indefinite maintenance or spousal support, because such provisions are inconsistent with their intention to remain financially independent and self-supporting. Accordingly, the parties agree as follows:

A. The parties expressly intend that this agreement shall be binding on the issue of temporary, limited, or indefinite maintenance, alimony, or spousal support in any form. ...

(Emphasis added.) When reviewing the agreement, Elyse identified the inaccuracy regarding her employment status and insisted on correcting the representation before signing the agreement. The parties therefore wrote and initialed the statement “Elyse’s not employed.”

¶15 Elyse now argues that the parties’ handwritten statement nullified the remainder of the maintenance provision, as the parties were not, in fact, “fully independent and self-supporting.” The acknowledgement that Elyse was not employed, however, did not change the effect of the agreement. The terms “not employed” and “self-supporting” are not necessarily mutually exclusive. Elyse knew the extent of her own financial situation and nevertheless opted to sign the agreement. Further, just as she had insisted on changing the language regarding her employment status, she could have challenged the terms of the maintenance provision.

¶16 Based upon the foregoing, we conclude that the trial court properly enforced the premarital agreement and therefore, affirm the judgment.

By the Court.—Judgment affirmed.

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

