

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 559

September Term, 2021

XIAODONG LUO

v.

HONGXIA LIU

Wells, C.J.,
Ripken,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: April 28, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Xiaodong Luo (“Luo”) appeals from an order of the Circuit Court for Montgomery County that included an award of *pendente lite* alimony to Hongxia Liu (“Liu”). For the reasons discussed below, we shall reverse the alimony award but shall leave the order otherwise undisturbed.

FACTUAL AND PROCEDURAL HISTORY

The parties first met in 2012 and subsequently decided to marry. On March 4, 2016, the parties entered into a prenuptial agreement. At that time, Luo was 47 years old and Liu was 44. The prenuptial agreement includes the following language which provides for a mutual waiver of alimony:

Each of the parties has income from individual property interests sufficient to provide for his or her respective support. Each party has been self-supporting for a period of time prior to the contemplated marriage. Both parties feel that they are capable of future self-support and of maintaining themselves on a self-supporting basis. Therefore, in the event of a marital separation or dissolution, it is agreed and understood that neither party shall seek or obtain any form of alimony or support from the other, or seek any relief, other than a distribution of their joint property interests or those property interests acquired during the course of the marriage, in any manner other than as provided by this Agreement.

The parties were married on April 6, 2016.

On May 30, 2017, the parties entered into a marital settlement agreement in which they stated their mutual desire to “formalize their separation and to settle all questions of maintenance and support, alimony, counsel fees,” and property. The marital settlement agreement includes the following provision, pursuant to which both parties waived anew any right to alimony from the other:

ALIMONY AND SUPPORT

It is the mutual desire of the parties that hereafter they shall each maintain and support themselves separately and independently of the other. Accordingly, and in consideration of this Agreement, Wife releases and discharges Husband, absolutely and forever, for the rest of her life from any and all claim or right to receive from Husband temporary, rehabilitative, definite, or indefinite alimony, support, or maintenance for the past, present or future. Wife understands and recognizes that, by the execution of this Agreement, she cannot at any time in the future make any claim against Husband for alimony, support and maintenance. Husband releases and discharges Wife, absolutely and forever, for the rest of his life from any and all claim or right to receive from Wife temporary, rehabilitative, definite, or indefinite alimony, support, or maintenance for the past, present or future. Husband understands and recognizes that, by the execution of this Agreement, he cannot at any time in the future make any claim against Wife for alimony, support, or maintenance. In accordance with Section 8-103 of the Family Law Article of the Annotated Code of Maryland, the parties agree that the provisions of this paragraph with respect to alimony, spousal support, and/or maintenance are not and shall not be subject to any court modification.

On September 6, 2018, Luo filed a complaint for absolute divorce based on a 12-month separation. The marital separation agreement was filed along with the complaint. Liu filed a counter-complaint for limited divorce that included a request for *pendente lite* alimony, rehabilitative alimony, and/or permanent alimony.

On August 12, 2019, Liu filed a motion to set aside the prenuptial agreement and the marital settlement agreement. Liu alleged that neither agreement was valid or enforceable due to fraud, duress, undue influence, and unconscionability. In addition to requesting an order declaring both agreements to be null and void, Liu requested attorney's fees and "[s]uch other and further relief as the Court may deem just and proper."

On October 15, 2019, Liu filed a request for a hearing on her request for *pendente lite* alimony. Luo filed an opposition to the motion on grounds that Liu waived her right

to alimony. On November 16, 2020, the court began a three-day hearing on the validity of the agreements, at which both parties testified. Both parties were represented by counsel and were assisted by a Mandarin interpreter.

In addition to her request for an order declaring the agreements to be null and void, Liu requested alimony. Counsel for Luo objected to any consideration of alimony, stating that the purpose of the hearing was limited to determining the validity of the agreements. The court explained that, “to the extent that there are some economic issues that might have to be addressed at this time, that could probably be discussed in a proceeding like this.” At the conclusion of the hearing, the court took the matter under advisement.

On January 29, 2021, the court issued a two-page “Order *Denying* Motion to Set Aside Agreements” (emphasis added). The court expressed the following findings and conclusions:

The parties met on a Chinese dating website in 2012. In 2014, [Liu] moved to the United States to pursue a relationship with [Luo]. The parties were married on April 6, 2016, and separated in September, 2018.

[Liu] testified that her signatures on the Prenuptial Agreement (“P.A.”) and the Marital Settlement Agreement (“MSA”) were obtained fraudulently and are unconscionable. [Liu] testified that [Luo] told her the P.A. was an immigration document that she needed to sign, in order to remain in the United States. [Liu] signed the P.A. She did not seek legal advice, and it is unclear whether she understood she could do so.

[Luo] testified that [Liu] speaks English, fully understood the documents she was signing, that she attended university in China, and had been in the United States several times before the marriage. Not surprisingly, he declared that the P.A. and the MSA are valid (but did not say why) and should be enforced.

[Liu] testified that she had last taken English classes more than twenty years ago. She said she desired to learn English, but [Luo] said she was too

old. She wanted to learn to drive a car, but [Luo] directed that she stay at home and raise his children by a previous marriage. [Luo] was in charge of the money, and directed her where to sign on tax and other government forms. Her limited English capabilities left her in a position of economic dependency. [Luo] had complete access to her accounts and passwords; the reverse was not true vis-à-vis [Luo's] resources.

[Luo] stated [Liu] visited the United States several times for one to four months. She independently rode the bus and visited friends. He said that at her interview with INS [Immigration and Naturalization Service], [Liu] spoke English without the assistance of a translator. He noted that she attended a prestigious university in China.

[Luo] also testified that [Liu], not he, was the one who wanted to be married and that the P.A. was her idea.

The Court accepts that [Liu's] English language skills are limited. She would undoubtedly have needed some language assistance. However, the Court has struggled to imagine that she did not understand what she was signing. She had several weeks to consult an attorney before the wedding, but did not do so. [Luo] testified that [Liu] added two paragraphs to the MSA. In short, the evidence does not rise to the level of fraud.

But the analysis does not end there. [Liu] came to the United States expecting a life with [Luo]. She left her homeland and relied upon [Luo's] promise of a bright future. What transpired was not what was promised

[Luo] earns about \$380,000 a year. [Liu], on the other hand, came to the United States with \$3,000. She is entitled to *pendente lite* alimony, in the amount of \$3,000 per month, pending further proceedings.

It is therefore this 25th day of January 2021, by the Circuit Court for Montgomery County, Maryland

ORDERED, that commencing and accounting from January 1, 2020, [Luo] shall pay three thousand dollars (\$3,000.00) per month in *pendente lite* alimony, pending further Order of the Court; and it is further

ORDERED, that [Liu's] Motion to Set Aside Prenuptial Agreement and Marital Settlement Agreement [] be, and is hereby, **GRANTED IN PART**, pending further proceedings.

On February 5, 2021, Luo filed a motion to alter or amend, in which he requested that the order for *pendente lite* alimony be vacated because the sole issue before the court was the validity of the agreements, and there was insufficient evidence before the court to support the award. In addition, Luo requested that the court “clearly state” whether or not the prenuptial agreement and marital settlement agreement were valid and enforceable.

On May 26, 2021, the court denied the motion to alter or amend, stating that there was “no reason to revisit” the January 29 order. Luo noted this timely interlocutory appeal.¹

ISSUE PRESENTED

Luo presents three questions for review, which we combine and rephrase into a single question: Did the circuit court err in awarding *pendente lite* alimony?²

¹ Pursuant to § 12-303(3)(v) of the Courts and Judicial Proceedings Article, a *pendente lite* order for the payment of alimony is immediately appealable. *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010). Because Luo’s motion to alter or amend was filed within 10 days after the court’s order denying Liu’s motion to set aside the agreements, the time for filing an appeal from that order was extended until 30 days after the motion to alter or amend was decided. Md. Rule 8-202(c).

² The verbatim questions presented in Luo’s brief are:

1. Did the Circuit Court err when, after having taken testimony and received exhibits into evidence at a hearing set for the sole purpose of determining the validity *vel non* of the parties’ Prenuptial Agreement and Marital Settlement Agreement, it considered the issue of *pendente lite alimony*.
2. Assuming, *arguendo*, that the Circuit Court had authority to consider the issue of *pendente lite* alimony, did the Circuit Court err when it entered an award of *pendente lite* alimony in its Order Denying Motion to Set Aside Agreements, which agreements stated unequivocally that neither party shall seek or obtain any form of alimony or support from the other?
3. Assuming, *arguendo*, that the Circuit Court had authority to consider the issue of *pendente lite* alimony, did the Circuit Court err when it entered an award of

As we shall explain, because the court declined to declare the marital settlement agreement null and void, the court lacked authority to award alimony.

STANDARD OF REVIEW

When, as in this case, an action is tried without a jury, “the appellate court will review the case on both the law and the evidence.” Md. Rule 8-131(c). “Although we ‘will not set aside the judgment of the trial court on the evidence unless clearly erroneous,’ [i*d.*], ‘[t]he legal analysis of the lower court . . . enjoys no deferential appellate review.’” *Li v. Lee*, 437 Md. 47, 57 (2014) (quoting *Helinski v. Harford Mem’l Hosp., Inc.*, 376 Md. 606, 614 (2003)).

DISCUSSION

Luo contends that the court erred in awarding *pendente lite* alimony because (1) the hearing was scheduled for the sole purpose of determining the validity of the agreements; (2) the court had no legal authority to award alimony, and (3) there was insufficient evidence that Liu was financially unable to support herself or that Luo was able to make the payments. We agree with Luo that the court lacked authority to award alimony.³

Marital settlement agreements, such as the one executed by the parties on May 30, 2017, are “presumptively valid” unless they are unjust or inequitable on their face, “and the burden to prove that their execution was caused by coercion, fraud or mistake is upon

pendente lite alimony in its Order Denying Motion to Set Aside Agreements, given the lack of evidence presented at trial demonstrating Appellee’s inability to support herself and Appellant’s ability to make the payments ordered?

³ In this Court, Liu filed a motion to file her brief out of time. The motion was denied and Liu’s untimely brief was stricken.

the party making the allegation.”” *Kingsley v. Kingsley*, 45 Md. App. 199, 204 (1980) (quoting *Eaton v. Eaton*, 34 Md. App. 157, 162 (1976)). *See also* Md. Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”) § 8-101(a) (“A husband and wife may make a valid and enforceable deed or agreement that relates to alimony, support, property rights, or personal rights.”).

The order at issue did not declare, as Liu requested in her motion, that either the marital settlement agreement or the prenuptial agreement were null, void, and not legally binding, nor did the court order either agreement to be set aside.⁴ Consequently, even though the court did not affirmatively declare the agreements to be valid and enforceable, the presumption of validity of the marital settlement agreement still stands.

The authority of the court to modify an agreement between spouses with respect to alimony is governed by Section 8-103 of the Family Law Article, which provides, in pertinent part:

(c) The court may modify any provision of a deed, agreement, or settlement with respect to alimony or spousal support executed on or after April 13, 1976, regardless of how the provision is stated, unless there is:

- (1) an express waiver of alimony or spousal support; or
- (2) a provision that specifically states that the provisions with respect to alimony or spousal support are not subject to any court modification.

⁴ Although the operative language of the court’s order states that Liu’s motion to set aside the agreements was granted “in part” we presume that the court was referring to the grant of *pendente lite* alimony, which the court ostensibly awarded pursuant to Liu’s request for “such other and further relief as the Court may deem just and proper.”

Here, the parties entered into a marital settlement agreement in which they waived “any and all claim or right to receive . . . temporary, rehabilitative, definite, or indefinite alimony, support, or maintenance for the past, present or future.” In addition, the marital settlement agreement provides that, “[i]n accordance with Section 8-103 of the Family Law Article of the Annotated Code of Maryland, the parties agree that the provisions of this paragraph with respect to alimony, spousal support, and/or maintenance are not and shall not be subject to any court modification.” Accordingly, pursuant to FL § 8-103(c), the court was not authorized to award *pendente lite* alimony. In so far as the court denied, or did not grant, the motion to set aside the marital settlement agreement, the court erred by awarding *pendente lite* alimony.

**ORDER FOR PENDENTE LITE ALIMONY
REVERSED. ORDER OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
OTHERWISE NEITHER AFFIRMED NOR
REVERSED. COSTS TO BE PAID BY
APPELLEE.**