Circuit Court for Prince George's County
Case No. CAD21-02272

CHILD ACCESS

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1490

September Term, 2022

CHRISTINA KEATING SAMI

v.

ADIL SAMI

Friedman,
Zic,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: June 20, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case involves the interpretation of a prenuptial agreement, dated August 27, 2005, between Christina Keating Sami, Appellant, and Adil Sami, Appellee, which states in full:

> (1) We, Christina Keating and Adil Sami, fully agree that whenever Christina Keating willingly leaves, initiates separation from, or initiates divorce from Adil Sami, any children born of this wedlock will remain in the full custody of Adil Sami for the duration of such a separation, or in the event of such a divorce. In any of such occasions, Christina Keating will retain unlimited visitation rights, including the right to reside (as a visitor) in the home where the child or children is/are residing, for an unlimited length of time, as a guest of Adil Sami. In the event of death or incapacitation of Adil Sami, full custody of child/children go/es to Christina Keating, (only for the duration of the incapacitation).
>
> (2) I, Christina Keating, fully agree that any children born of my wedlock with Adil Sami will be fully raised according to the teachings of Islam.
>
> (3) We, Adil Sami and Christina Keating, fully agree that, in the case of a divorce, aside from provisions for the children (which will be made from the earnings of both parties concerned), any earnings, land, investments, and wealth of any kind which were brought into the marriage as a possession of either party or earned or acquired by either party (Adil or Christina) during marriage, will rightfully remain the property of that party (Adil or Christina).

Judge Krystal Q. Alves of the Circuit Court for Prince George's County, after a hearing in February of 2022, determined that Paragraphs 1 and 2 were unconscionable and against public policy but ruled that Paragraph 3 was valid and enforceable.

During a subsequent merits hearing on September 6, 2022, Judge Alves reinforced the validity of Paragraph 3 of the prenuptial agreement and did not entertain evidence regarding the acquisition of assets by either party; she also refused to accept a proffered consent agreement between the parties with respect to custody of their three minor children and set in further proceedings relative to custody and visitation.

Ms. Sami presents us with five questions on appeal, which we have renumbered:

1) Did the trial court err in holding that paragraph one (1) and paragraph two (2) of the prenuptial agreement of the parties dated August 27, 2005, were severable from the remainder of the agreement set forth in paragraph three (3)?
2) Did the trial court err in failing to set aside in full the prenuptial agreement of parties dated August 27, 2005, where a confidential relationship existed, and the Appellee failed to meet his burden to establish fairness in the procurement of the agreement?
3) Did the trial court err in failing to set aside the prenuptial agreement in full as unconscionable?
4) Did the trial court err or abuse its discretion in refusing to take testimony and evidence regarding property acquired during the marriage and in granting the Judgment of Absolute Divorce without considering the same?
5) Did the trial court err in refusing to adopt the agreement of the parties' resolving custody and access to the minor children?

For the reasons that follow, we shall affirm the decisions of Judge Alves.

FACTS & PROCEDURAL HISTORY

Adil Sami and Christina Keating Sami met in 2004, when they were adults. After approximately a year and a half of dating, Ms. Sami proposed to Mr. Sami. On August 27, 2005, the parties executed the prenuptial agreement in issue and, thereafter, participated in a religious marriage ceremony. The parties were officially married on September 2, 2005 in Michigan and became parents of three children born in 2009, 2011, and 2015.

On February 24, 2021, Ms. Sami filed a Complaint for Absolute, or in the alternative, Limited Divorce in the Circuit Court for Prince George's County, to which Mr. Sami filed an Answer, and subsequently, a Counter-Complaint for Limited Divorce, or in the alternative, Absolute Divorce.

Ms. Sami, thereafter, filed an Amended Complaint for Absolute Divorce, in which she asked the court to set aside the prenuptial agreement of the parties, as well as grant her, *pendente lite* and permanently, sole legal and physical custody of the parties' three minor children, child support, alimony, and attorneys' fees; a monetary award reduced to a judgment; an equitable division of Mr. Sami's retirement and pension funds; and a sale, in lieu of partition, of any property jointly owned, with any proceeds divided equitably.

In response, Mr. Sami filed an Answer, Counter-Complaint for Limited Divorce, and subsequently, an Amended Counter-Complaint for Absolute Divorce, in which he asked that the court validate the terms of Paragraph 3 of the prenuptial agreement by which he and Ms. Sami would maintain property each acquired before and during the marriage. Mr. Sami also requested the court to grant, *pendente lite* and permanently, joint legal and shared physical custody of the children "on a 50/50 week on week off basis," child support to Ms. Sami pursuant to the Maryland Child Support Guidelines, attorneys' fees, as well as the right to claim his minor children for tax purposes. Ms. Sami moved to strike Mr. Sami's Amended Counter-Complaint, but the court denied the motion.

In February of 2022, Judge Alves held a virtual proceeding to determine the validity of the prenuptial agreement, during which both Mr. and Ms. Sami testified. On the same day, Judge Alves orally ruled that Paragraphs 1 and 2 were "unconscionable and against public policy," and Paragraph 3 was "valid, binding, and enforceable." Judge Alves ruled that Paragraph 3 could be separately enforced under "the law to sever contracts," because, unlike the first two paragraphs, Paragraph 3 concerned the division of marital property upon divorce, and "you can keep the third paragraph and still be a valid agreement by its

structure and by its terms." On the following day, Judge Alves supplemented her oral ruling on the record, without counsel or the parties present, when she found that the parties acted in accordance with Paragraph 3 by keeping property separate during the marriage and found Mr. Sami's testimony credible that Ms. Sami initiated the prenuptial agreement.

On September 6, 2022, a trial on the merits occurred. Counsel for Ms. Sami argued that, regardless of the determination that Paragraph 3 was valid, the court should take testimony and entertain evidence and arguments with respect to the division of marital assets. Judge Alves ruled that because Paragraph 3 was valid, no further evidence and argument regarding marital property would be entertained.

During the course of the trial, the parties proffered an agreement they reached related to the children, which, as related by Judge Alves, provided that "Mother has sole custody of the minor children" and "Defendant/father only gets access to the minor children if the mother decides to give him access." The judge rejected that agreement, determining that such an arrangement is "generally not in the best interest[s] of the child[ren]." Judge Alves, thereafter, orally granted an absolute divorce to Mr. Sami.

On September 30, 2022, a Judgment of Absolute Divorce was entered, which included Judge Alves' rulings relative to the prenuptial agreement and denied all other requests for relief with respect to a division of marital property. The judge also granted, *pendente lite*, primary physical custody of the three minor children to Ms. Sami, with Mr. Sami having supervised access with the children every other Saturday and scheduled another merits hearing to occur in February of 2023 to address custody, access, and child support.

Ms. Sami timely filed her notice of appeal.

STANDARD OF REVIEW

Appellate review of a judgment entered following a bench trial is governed by Maryland Rule 8-131(c), which provides:

> When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"A trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996)). Legal conclusions, however, are reviewed *de novo*, without deference to the trial court. *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quotations and citations omitted).

DISCUSSION

A prenuptial agreement, also referred to as a premarital or antenuptial agreement, may be entered into by prospective spouses prior to marriage in order to "settl[e] in advance alimony and property rights of the parties upon divorce." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 14-2 (7th ed. 2021). Maryland case law specifically permits couples to enter agreements to control the distribution of property upon divorce. *Hartz v. Hartz*, 248 Md. 47, 55 (1967) ("The validity, propriety and, indeed, favor in the eyes of the law of antenuptial agreements settling or barring property rights of the parties

is recognized."). *See Stewart v. Stewart*, 214 Md. App. 458 (2013); *Cannon v. Cannon*, 384 Md. 537 (2005); *Frey v. Frey*, 298 Md. 552 (1984). *See also* 5 Williston on Contracts § 11:8 (4th ed. 2023) (explaining that through prenuptial agreements, "the prospective husband and wife may define their rights in property then existing or subsequently acquired and they may thereby vary substantially those property rights which would otherwise arise on their marriage by operation of law, superseding, in essence, statutory or common-law rules on that subject.").

It is well-settled that prenuptial agreements are contracts, and, therefore, are analyzed "under the objective law of contract interpretation." *Cannon*, 384 Md. at 553. We are mindful, however, that "unlike the normal run of contracts, prenuptial agreements invariably involve a confidential relationship that is 'presumed to exist as a matter of law' between the parties entering into that kind of agreement." *Stewart*, 214 Md. App. at 468 (quoting *Cannon*, 384 Md. at 572). When a confidential relationship exists, "the burden of proof correctly falls upon the party seeking to enforce the agreement" to establish the agreement's validity. *Cannon*, 384 Md. at 573.

Severability

In the present case, Judge Alves reviewed the prenuptial agreement and found that Paragraph 3, unlike the other two provisions, did not concern the children, but rather addressed the "division of [Mr. and Ms. Sami's] pre-marital property and any subsequent property," in the event of divorce:

> Under the law of contracts, there is the doctrine of severability. And the Court agrees that this contract can be severed. When you look at the contract

> itself—it's numbered one, two, and three – one and two deal with the children and how the children will be raised and what the religion will be.
>
> * * *
>
> But look at paragraph three. Paragraph three says nothing about really the children and how they're raised. It was talking about provisions for the children. And that's I guess, you know, like child support or things like that which will be made from the earnings of both parties concerned. But what it's talking about was the division of their pre-marital property and any subsequent property[.]

Accordingly, Judge Alves ruled that Paragraph 3 could be separately enforced under "the law to sever contracts," because, unlike the first two paragraphs, Paragraph 3 concerned the division of marital property upon divorce, and "you can keep the third paragraph and still be a valid agreement by its structure and by its terms":

> And the Court does have the ability to under the law to sever contracts. And this contract is delineated by three paragraphs which you can keep the third paragraph and still be a valid agreement by its structure and by its terms. So, for that reason, this Court finds that the third paragraph only of the prenuptial agreement is valid, binding, and enforceable.

Before us, Ms. Sami argues that the court erred by severing the first two paragraphs and enforcing Paragraph 3, because there was no severability clause, and because all three paragraphs were "part of a unitary scheme inclusive of provisions regarding equitable distribution and support," and therefore, could not be severed.[1]

[1] Mr. Sami argues, in part, that Paragraph 3 was enforceable on its own, pursuant to Sections 8-101 of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.) and 10-370 of the Family Law Article. With respect to Mr. Sami's arguments, Section 8-101 of the Family Law Article concerns "deeds, agreements, and settlements" between "husband and wife," and therefore does not implicate prenuptial agreements, while Section 10-370 of the Family Law Article, previously Section 10-358 until 2015, concerns the severability of clauses with respect to the Maryland Uniform Interstate Family Support Act, Sections

(continued…)

When a clause in a contract is invalidated, the issue arises as to its effect on the validity of the rest of the contract. A contract may contain an express severability clause, which provides that the invalidity of any provision will not vitiate the entire contract. *Severability Clause*, Black's Law Dictionary (11th ed. 2019) (defining "severability clause" as "a provision that keeps the remaining provisions of a contract or statute in force if any portion of that contract or statute is judicially declared void, unenforceable, or unconstitutional."). *See* 15 Williston on Contracts § 45:6 ("The parties' intent to enter into a divisible contract may be expressed in the contract directly, through a so-called 'severability clause[.]'"). When an agreement does not contain a severability clause, a contract provision "can be severed from the instrument without destroying the instrument's overall validity or the validity of other provisions if it is not so interwoven as to be logically inseparable from the rest." *Connolley v. Harrison*, 23 Md. App. 485, 488 (1974).

Based upon the *Connolley* standard, Judge Alves did not err in severing Paragraphs 1 and 2 from the prenuptial agreement and enforcing Paragraph 3, despite the absence of a severability clause. The judge analyzed the three paragraphs and found that the first two paragraphs dealt with the care and custody of children, while the third paragraph addressed the division of marital property, which implicated separate issues. She ruled that Paragraph

(…continued)

10-301 to 10-371 of the Family Law Article, which is not relevant in the instant case, because the Act "was intended to address the problem of multiple support orders issued by multiple states as to the same child." *Superior Court v. Ricketts*, 153 Md. App. 281, 319 (2003). *See* 2015 Md. Laws, ch. 308 (explaining the bill's purpose of "revising the Maryland Uniform Interstate Family Support Act" and renumbering, among others, Section 10-358 as Section 10-370 of the Family Law Article).

3 was a valid prenuptial agreement as to the division of marital property upon divorce, and "by its structure and by its terms" could be separately enforceable, as "it is not so interwoven as to be logically inseparable" from the two other provisions.

Ms. Sami, however, argues before us that Paragraph 1 should not have been severed from Paragraph 3, because the first paragraph provides Ms. Sami with unlimited housing, which, she claims, is so interconnected with the division of property set out in Paragraph 3, that it could not be severed. Unlimited housing, however, does not concern the division of property set forth in Paragraph 3, but rather implicates a support obligation similar to alimony, which is separate from the retention of "any earnings, land, investments, and wealth of any kind" acquired before or during the marriage.

As a result, Judge Alves did not err in severing Paragraphs 1 and 2 from the prenuptial agreement and enforcing Paragraph 3.

Validity of Paragraph 3 of the Prenuptial Agreement

Paragraph 3 of the prenuptial agreement provides:

> We, Adil Sami and Christina Keating, fully agree that, in the case of a divorce, aside from provisions for the children (which will be made from the earnings of both parties concerned), any earnings, land, investments, and wealth of any kind which were brought into the marriage as a possession of either party or earned or acquired by either party (Adil or Christina) during marriage, will rightfully remain the property of that party (Adil or Christina).

Ms. Sami, before us, challenges Judge Alves' ruling regarding the validity of the agreement based upon the "confidential relationship" doctrine, unfairness in the procurement of the agreement, and unconscionability.

In analyzing the prenuptial agreement, Judge Alves found that the agreement was "not drafted by attorneys," but that "the parties entered into th[e] agreement" themselves. Judge Alves also reviewed the parties' circumstances at the time the agreement was entered into. The judge found that Ms. Sami "work[ed] for the federal government[,]" which had benefits and "things of that nature":

> Mrs. Sami was working for the federal government. She testified that she had all of the benefits that a federal good government job, good government federal job provides. She probably had a T.S.P., and she had health benefits, and she had things of that nature.

By contrast, Judge Alves found that Mr. Sami was a "full-time student" who "didn't have his work visa," and unlike Ms. Sami, "[h]e didn't have any assets":

> Mr. Sami was a full-time student working on his Masters, at some point working…at a pizza place which is where they met. He testified he was making either four dollars and fifty cents an hour or four dollars and twenty-five cents an hour…and he acknowledged he didn't have his work visa then.
>
> He didn't have any assets. He didn't have any money, and he was a graduate student at Strayer University working at a pizza place to make ends meet. He had a ten-year-old Honda maybe, a car, wasn't new, and he lived in the home of another family. He rented a room, not an apartment. He rented a room.

Judge Alves found that Ms. Sami was the party who "primarily benefited" from Paragraph 3, "because she had been working. She did have federal benefits. She was in the federal system."

With respect to the nature of a confidential relationship, the judge found that there was no dispute that "a confidential relationship exist[ed] between [Mr. and Ms. Sami]." The judge noted that the parties agreed that neither of them discussed assets when the agreement was executed, but found that Ms. Sami had assets, while Mr. Sami had none:

> And this Court finds that given the totality of the evidence and again crediting the testimony of Mr. Sami that Ms. Sami was not prejudiced by the lack of information from Mr. Sami. And there was really no evidence that he had anything. When I say anything I mean any assets to his name.

Judge Alves, further, analyzed whether the benefit to Ms. Sami "was commensurate with what she relinquished [so] that such agreement was fair and equitable," and whether Ms. Sami "entered into the agreement freely and understandingly." With respect to whether Ms. Sami's benefit was commensurate with her waiver, Judge Alves reiterated that "it was Ms. Sami who had the assets. It was Ms. Sami who had all of the benefits, and she testified to a federal employment. And Mr. Sami didn't have that." The judge also found that "Ms. Sami was not prejudiced [by] not knowing the assets that Mr. Sami had."

With respect to the formation of the contract, Judge Alves did not find Ms. Sami's testimony credible that she was coerced:

> [T]he testimony was that Ms. Sami said that she wrote the document, which she agrees that's her signature, but Mr. Sami directed and told her what to write. The Court does not find that very credible.
>
> * * *
>
> Now, regarding freely and voluntarily, there was testimony from Ms. Sami that Mr. Sami put her in a room or they were in a [room] and would not let her out of a room. I don't know if he put her there or they were in a room, but would not let her out of the room and would not let her go until she signed the agreement. Mr. Sami denies that.
>
> Looking at the totality of the evidence and using your common sense and everyday experiences as the fact finder does in any case where there's a fact finder, the Court doesn't find Ms. Sami's testimony credible.

Judge Alves also found that Ms. Sami had an opportunity to consult friends and family, including her brother who was an attorney, prior to signing the agreement:

> It came out through testimony that [Mr. and Ms. Sami] had a religious ceremony on August 27th. That is not a legally binding marriage. The legally binding marriage happened on September 2nd.
>
> And after that time, Ms. Sami, although again she had a family member who is a lawyer, she had friends who were around, she at no time indicated that she was being coerced or threatened.
>
> * * *
>
> She had the opportunity to consult a lawyer. She did not, and she had a lawyer in her family, it came out through testimony, she didn't consult. Not just anybody in her family, it's her brother. He's a patent attorney. Yes, all attorneys don't know all areas but they can direct you and look at something, and she never did.

Judge Alves also iterated that Ms. Sami would have signed the agreement, regardless of the lack of consultation, because "she loved Mr. Sami and didn't question him" and "the third paragraph benefited her":

> You look at the pictures that were regarding the ceremony and to her credit Ms. Sami said she loved Mr. Sami and didn't question him. But that's not a viable reason, if you want to believe her testimony, that she didn't [consult others].
>
> She didn't do it because the third paragraph benefited her at the time. And she probably—you know it benefited her at the time. She was marrying a guy who was in graduate school who work[ed] at a pizza place[.]

Judge Alves reiterated that she "found Mr. Sami's testimony credible and much of Ms. Sami's testimony not credible," because "it didn't add up" or "coincide with the evidence that surrounded the situation at the time."

As a result, Judge Alves did not find "that there was overreaching based upon all of the evidence." Judge Alves also did not find "any fraud or duress or coercion, mistake, undue influence, incompetency or unconscionability." With respect to unconscionability,

Judge Alves found that "the third paragraph under the facts of this case do[es] not shock the conscience, because really Ms. Sami is benefited."

Accordingly, Judge Alves determined that "there was no unfairness or inequity in the agreement or how the agreement came about," and as a result, she found "that the third paragraph only of the prenuptial agreement is valid, binding, and enforceable."

On the following day, February 16, 2022, Judge Alves supplemented her oral ruling on the record, without counsel or the parties present, when she found that the parties acted in accordance with Paragraph 3 by keeping the property of each separate during the marriage, as "each had their own separate accounts, personal accounts, checking accounts that neither party was on." Judge Alves also found Mr. Sami's testimony credible that Ms. Sami initiated the prenuptial agreement, which the judge explained supported the validity of the prenuptial agreement.

Initially, it is important to acknowledge that each of the findings entered by Judge Alves is supported by the record. Ms. Sami argues, however, that Mr. Sami failed to meet his burden to establish fairness in the procurement of the prenuptial agreement. Because a confidential relationship exists as a matter of law between prospective spouses entering into a prenuptial agreement, Mr. Sami did bear the burden of proof to establish the agreement's validity, and he satisfied that burden. *Stewart v. Stewart*, 214 Md. App. 458, 468-69 (2013) (citing *Cannon v. Cannon*, 384 Md. 537, 573 (2005)).

"The real test in a determination of the validity of an antenuptial agreement is whether there was overreaching, that is, whether in the atmosphere and environment of the confidential relationship there was unfairness or inequity in the result of the agreement or

in its procurement." *Hartz v. Hartz*, 248 Md. 47, 57 (1967). *See Stewart*, 214 Md. App. at 468-69; *Cannon*, 384 Md. at 573. "One way" a party meets its burden to validate the prenuptial agreement is if it "documents a full, frank, and truthful disclosure of his or her assets and their worth before the antenuptial agreement is signed." *Cannon*, 384 Md. at 573. In addition, a prenuptial agreement may be validated "if the enforcing party is able to show that the party attacking the agreement possessed knowledge of the assets subject to the agreement's waiver provisions[.]"[2] *Id.* "The purpose behind a requirement of disclosure or knowledge is 'so that he or she who waives [rights] can know what it is he or she is waiving.'" *Id.* (quoting *Hartz*, 248 Md. at 56-57). "If either disclosure or knowledge 'is proven by the enforcing party and insufficiently rebutted by the attacking party, there can be no overreaching.'" *Stewart*, 214 Md. App. at 470 (quoting *Cannon*, 384 Md. at 574).

If there is neither disclosure by the enforcing party nor knowledge by the attacking party, "and if 'the allowance made to the one who waives is unfairly disproportionate to the worth of the property involved at the time the agreement is made,' then the validity of the agreement 'must be tested by other standards.'" *Stewart*, 214 Md. App. at 470 (quoting *Hartz*, 248 Md. at 57-58). Accordingly, our Supreme Court (then the Court of Appeals of

[2] In *Cannon*, 384 Md. at 573 n.21, the Supreme Court explained,

> Proof of knowledge, unlike full, frank, and truthful disclosure, does not require that the enforcing party demonstrate that the attacking party had knowledge of the discrete value of each asset. Instead, knowledge means that the attacking party must be shown to have adequate knowledge—knowledge of the existence of the assets subject to the waiver and knowledge of what those assets are worth in sum so that the attacking party may be found to know what it is he or she is waiving.

Maryland[3]) created a two-prong test to determine overreaching in such a situation, "which requires the court to ask, first, 'was the benefit to [the party attacking the agreement] commensurate with that which she relinquished so that the agreement was fair and equitable under the circumstances,' and, second, 'did the subsequent would-be repudiator of the contract enter into the agreement freely and understandingly.'" *Id.*

In the present case, Judge Alves found that, at the time of the execution of the agreement, Mr. Sami did not have any assets, while Ms. Sami did and, as a result, Ms. Sami was not prejudiced by Mr. Sami's failure to disclose his assets, as he did not have any.

The judge further found that the agreement was "fair and equitable" with respect to the rights waived, and it was entered into "freely and understandingly." *Cannon*, 384 Md. 576. As to the rights waived under Paragraph 3, the judge found that each party was to retain whatever property each acquired before or during the marriage. As a result, Ms. Sami waived any rights to Mr. Sami's property, but received the benefit of retaining her own property, and Mr. Sami waived any rights in Ms. Sami's property and retained his own property. Notably, the judge found that Ms. Sami, in fact, benefited more than Mr. Sami from the third paragraph, because she had assets to retain, which Mr. Sami, who had no assets, could not lay a claim to by virtue of marriage.

[3] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules, or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

The judge also found that Ms. Sami entered into the agreement freely and understandingly. At the agreement's execution, the judge found that Mr. Sami was a student without a work visa while Ms. Sami had a government job with benefits and that Mr. and Ms. Sami entered the agreement without counsel. Judge Alves found that Ms. Sami had an opportunity to consult an attorney, as well as others, prior to signing, and the judge found Ms. Sami's testimony incredible that she was prevented from doing so. *See Cannon*, 384 Md. at 578 ("It was enough for Mr. Cannon to demonstrate that Mrs. Cannon had the opportunity to seek counsel and that she was not discouraged from doing so.").

Moreover, the judge found that, regardless of her lack of consultation and the brief timeframe, Ms. Sami still would have entered the agreement because she loved Mr. Sami and did not question him. *See Stewart*, 214 Md. App. at 475 ("Given the circuit court's finding that she would have signed the agreement regardless of the circumstances attending its formation… Ms. Stewart can hardly claim here that she was prejudiced by the allegedly brief period of time she was given to consider the agreement."). As to whether Ms. Sami entered the agreement "understandingly," the judge found that Ms. Sami wrote and signed the agreement, that Ms. Sami likely proposed Paragraph 3 to Mr. Sami, and that during the marriage, the parties acted in accordance with the terms by keeping each one's property separate, which evidenced Ms. Sami's understanding of the terms of the agreement.

Nonetheless, Ms. Sami appears to argue, without citation to authority, that because Mr. Sami's family "had great wealth" and "owned lots of property," his *family's* assets should have been disclosed prior to the execution of the prenuptial agreement.

We disagree. Judge Alves found that, at the time the parties entered into the agreement, Mr. Sami had no assets. The only way that Mr. Sami would have had the benefit of his parents' assets would have been through a gift or inheritance, the value of which would have been excluded from any marital property award. Section 8-201(e)(3)(ii) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.)[4] (excluding from the definition of "marital property" any property "acquired by inheritance or gift from a third party").

Ms. Sami, then, argues that the trial court erred in failing to set aside the prenuptial agreement in full as substantively unconscionable, after it had determined that Paragraphs 1 and 2 were unconscionable and void against public policy.

"An 'unconscionable contract has been defined as one characterized by extreme unfairness, which is made evident by (1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party.'" *Stewart*, 214 Md. App. at 477 (quoting *Walther v. Sovereign Bank*, 386 Md. 412, 426 (2005)) (internal quotations and citations omitted).

The party challenging the prenuptial agreement bears the burden of establishing unconscionability. *Stewart*, 214 Md. App. at 478 (citing *Cannon*, 384 Md. at 554). Unconscionability of a prenuptial agreement is determined at "the time the contract was entered." *Id.* Unconscionability of one or more provisions in a contract does not deem the entire contract unconscionable as a matter of law. *See Martin v. Farber*, 68 Md. App. 137,

[4] All statutory references to the Family Law Article are to Maryland Code (1984, 2019 Repl. Vol.).

143-44 (1986) ("If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract or may enforce the remainder of the contract without the unconscionable term or may so limit the application of any unconscionable term as to avoid any unconscionable result." (quoting Restatement (Second) of Contracts § 208 (1981))); *Williams v. Williams*, 306 Md. 332, 338 (1986) (same); 8 Williston on Contracts § 18:18 (same).

A contract is substantively unconscionable "when the terms are so one-sided as to 'shock the conscience' of the court." *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 112 (2013), *aff'd*, 437 Md. 47 (2014) (quoting *Walther*, 386 Md. at 426). Substantively unconscionable terms are "unreasonably favorable to the more powerful party," "attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law," or are "unreasonably and unexpectedly harsh." *Walther*, 386 Md. at 426-27.

In *Williams v. Williams*, 306 Md. 332, 334-36 (1986), a case upon which Ms. Sami relies, the trial court found that the separation agreement shocked the conscience, as it provided for Mr. Williams to relinquish all interest in marital property and custody of his children, assume all marital debt and obligations indefinitely, and "most significant[ly]," pay a weekly financial obligation that "would exceed his weekly net salary." Our Supreme Court agreed with the trial court that "the burdens on the husband were so oppressive that they were impossible to perform," and held that the evidence supported the trial judge's finding that the agreement was "so unfair and inequitable as to shock his conscience." *Id.* at 343.

By contrast, in *Martin v. Farber*, 68 Md. App. 137, 139-40 (1986), the prenuptial agreement, signed three days before marriage, provided that "Mrs. Farber would retain sole control of the property she acquired either prior to or during the marriage" and that "Mr. Farber relinquished all rights in property and estate of Mrs. Farber." During the marriage, Mr. Farber gave every paycheck to Mrs. Farber as she "managed the couple's" finances. *Id.* Mrs. Farber, however, used the paychecks to acquire assets in her own name. *Id*. Upon Mrs. Farber's death, the circuit court held that, even though Mr. Farber had released his claims to Mrs. Farber's estate, he had given every one of his paychecks to her for over forty years "upon her assurance that she would take care of him," so that the subsequent acts rendered the agreement unconscionable. *Id.* at 140.

On appeal, we held that the circuit court "erred in ruling that the agreement was unconscionable," because it had relied upon circumstances that arose after the agreement's execution, rather than at the time the agreement was made. *Id*. at 144. Neither the terms of the agreement nor the circumstances of its execution "render[ed] it unconscionable or otherwise legally objectionable," and "[n]o matter how disturbing" Mrs. Farber's actions were, there was no "adequate basis" for determining the agreement to be unconscionable. *Id.* at 144-45.

In the instant case, Judge Alves found that "the third paragraph under the facts of this case do[es] not shock the conscience." The judge found that the agreement provided that Mr. and Ms. Sami would retain control of the property that he or she acquired either prior to or during the marriage in the event of divorce, and thereby, would waive any rights to property acquired by the other. As in *Farber*, the third paragraph's terms were neither

unconscionable nor "otherwise legally objectionable." 68 Md. App. at 144. Paragraph 3, moreover, did not involve a waiver of any alimony, for example, to which Ms. Sami may have been entitled to under Section 11-101 of the Family Law Article. *See Stewart*, 214 Md. App. at 479 (noting that the prenuptial agreement was not substantively unconscionable, in part because, it did not waive alimony, "a potentially valuable right retained by Ms. Stewart.").

With respect to any assertions that Ms. Sami made in her briefs, albeit not in her questions, that she was coerced, under duress, or unduly influenced at the time of the execution of the agreement, and specifically with regard to Paragraph 3, Judge Alves found her testimony to be incredible, and we will not refute that finding. *See Smith v. State*, 415 Md. 174, 185 (2010) ("Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.").

As a result, we hold that Judge Alves did not err in determining that Paragraph 3 of the prenuptial agreement was valid, in answer to Questions 2 and 3 herein.

Application of Paragraph 3 at Trial

During the merits hearing, Ms. Sami, through counsel, argued that evidence regarding how the property was acquired during the marriage and by whom should be entertained by the judge:

> [Counsel for Ms. Sami]: Regardless of whether the Court re-evaluates the validity of the agreement, the Court is, nevertheless, subject to—or, it is needed to interpret the prenuptial agreement…. [T]he prenuptial agreement

> on its face talks about acquisition of property. And the question I think in this context is what does acquisition mean in terms of the—assuming that the Court was going to enforce the prenup, what does acquisition mean, in terms of the enforcement of the prenup.
>
> And I think that the Court has at least two routes to go in that regard. One is to take the testimony and evidence related to who made what efforts, in terms of acquisition of the property or [who] made what contributions, in terms of acquisition of the property over the course of the parties' relationship.
>
> Secondarily, and regardless of the validity of the prenup, even if the Court were to find or iterates the Court's ruling that the prenup is to stand, at least as to paragraph number 3, the Court still has equitable arguments that the Court can hear, in my view—including, but not limited to, arguments related to the constructive trust in light of my client's contribution to the properties.

Judge Alves determined, however, that if the parties differed regarding whose efforts undergirded the acquisition of property, that Ms. Sami could initiate another action to determine whether the prenuptial agreement was breached:

> I mean, if the parties differ as to how their prenuptial agreement is executed, then you can bring another action. I agree with [counsel for Mr. Sami], you can bring another action in contract that they're breaching the prenuptial agreement, which is a contract. But I'm not here to interpret the prenuptial agreement. I was just here to establish whether it was valid or not. I determined it was valid. So there's no reason as to the division of the marital property to go back and determine how it was acquired and all the things you would normally do if there wasn't an agreement.

She determined that there was no need to elicit further testimony:

> [I]t was my understanding in my reading of the prenuptial agreement that the division of whatever marital property the parties had was done pursuant to the prenuptial agreement. I mean, they did a lot of things pursuant to the prenuptial agreement, but, I mean, on this—just on the main issues, regarding the division of marital property, if I recall correctly, I did find that the provision was valid. And so there's no need to go through all of that.
>
> If the Court had found that the provision was not valid, then I would agree with you, we would have to go through everything, you know, as if an agreement did not exist. But an agreement does exist.

Ms. Sami contends, without citation to authority, that the trial court erred by refusing to take testimony and evidence regarding marital property, even though the court had found Paragraph 3 valid and enforceable. In this, she is wrong.

In *Herget v. Herget*, 319 Md. 466 (1990), our Supreme Court held that, while the statute permitting a monetary award was not enacted at the time the prenuptial agreement was created but was in force during the divorce proceedings, any claims to such an award, nevertheless, were properly waived under the terms of a prenuptial agreement. Mr. and Ms. Herget's agreement provided that the parties "waive…all…rights and interests which she or he…as wife or husband…may become entitled to…with respect to any property…now owned or hereafter acquired by the other," that Ms. Herget "releases…any…claims…in any estate or property of [Mr.] Herget now owned or hereafter acquired," and that "each party waives and releases unto the other party…all rights…in and to said property of the other…[so] that neither party obtains rights…in any property of the other by virtue of their marriage." *Id.* at 469-70. The Court found that the prenuptial agreement between the parties "manifested an unequivocal mutual intent to free all of their estate and property from any claims by the other that might arise by virtue of the marriage." *Id.* at 476. As such, the Court declined to grant a monetary award and enforced the prenuptial agreement that had been validated by the trial court. *Id.* at 476-77.

In the present case, Judge Alves ruled that Paragraph 3 of the prenuptial agreement was valid and enforceable. As in *Herget*, Judge Alves determined that Paragraph 3 reflected Mr. and Ms. Sami's intention to retain any property he or she acquired during the marriage and, thereby, waived any claims to the other party's property by virtue of marriage.

Therefore, Judge Alves' ruling regarding further testimony was appropriate, and she did not err.

Custody Consent Agreement

At the merits hearing, the parties proffered an agreement related to the three minor children, which, as stated by Judge Alves, included that "Mother has sole custody of the minor children" and "Defendant/father only gets access to the minor children if the mother decides to give him access."

Judge Alves explained how providing the children without access to their father was "generally not in the best interest[s] of the child[ren]." Accordingly, the judge rejected the agreement and explained that she would need to "hear whatever evidence there is and make a factual determination" about custody:

> The Court: …Before [counsel for Ms. Sami] start[s]—see, what I'm hearing from [Mr. Sami's counsel] is her client doesn't believe it's in the best interest for him to not have any contact. But to keep peace and if [Ms. Sami] really thinks that is in the best interest, then he's just going to go along with it. Is that correct?
>
> [Counsel for Mr. Sami]: Yes, Your Honor.
>
> The Court: Okay. So I don't want to hear what [counsel for Ms. Sami's] proffer of facts are. That's not necessarily in the best interest, which means that the Court is going to have to hear whatever evidence there is and make a factual determination. I can't—you know, generally, unless a Court finds that either party is unfit, it's in the best interest of the children to have, you know, contact with their parents. And this Court is not going to sign an order where one party has absolutely no contact with the other party, unless one party says so, because that can be used as a sword. Unless the other party believes, yeah it's in the best interest of the children not seeing me. And that's not what the Court is hearing.
>
> [Counsel for Mr. Sami]: No, it's not.

Judge Alves explained that she could not deny Mr. Sami access to his children unless she "make[s] a determination that he's [] unfit," and therefore, she had to "make a custody determination, going through the factors":

> Okay. I'm not stating facts, he doesn't believe that it's—he doesn't believe it's in the children's best interest for them not to see him. If that's not his position, then I cannot sign this order. And we're going to have to take testimony. I'm going to have to make a determination that he's either unfit, based upon whatever the Court hears, you know, judging the credibility of witnesses. And then make a custody determination, going through the factors. I can't sign this, this way.

Accordingly, the judge found that the parties' agreement was not in the best interests of the children, and as a result, scheduled another merits hearing, in which she would entertain testimony and evidence regarding custody and access.

Ms. Sami argues, again without citation to authority, that the court erred by refusing to adopt the parties' agreement at trial resolving custody and access to the minor children, without having heard testimony in support of it.

In exercising jurisdiction over the welfare of minor children pursuant to Section 1-201 of the Family Law Article, our Supreme Court has explained that courts are "governed by what is in the best interests of the particular child":

> In performing its child protection function and its private-dispute settlement function the court is governed by what is in the best interests of the particular child and most conducive to his welfare. This best interest standard is firmly entrenched in Maryland and is deemed to be of transcendent importance. In *Burns v. Bines*, 189 Md. 157, 162 (1947), quoting *Barnard v. Godfrey*, 157 Md. 264, 267 (1929), we observed that the statute giving equity courts jurisdiction over the custody of children 'is declaratory of the inherent power of courts of equity over minors, and [such jurisdiction] should be exercised with the paramount purpose in view of securing the welfare and promoting the best interest of the children.'

Ross v. Hoffman, 280 Md. 172, 174-75 (1977).

A court can refuse to adopt a consent agreement if it is not in the best interests of the child. *Knott v. Knott*, 146 Md. App. 232, 258-59 (2002) ("If the Consent Order is not in the best interests of the child, the court can refuse to accept it."); *Stern v. Stern*, 58 Md. App. 280, 291 (1984) (explaining that while the parents entered into a separation agreement about care and custody, "the parties cannot bind the chancellor as to the care or maintenance of any minor child."); *Stancill v. Stancill*, 286 Md. 530, 534 (1979) (explaining that courts have "plenary authority to determine questions concerning the welfare of children," and "[f]or time beyond memory, the public policy of this State has required that…the court's paramount concern be to secure the welfare and promote the child's best interest."); *Stern v. Horner*, 22 Md. App. 421, 431 (1974) (noting that when an agreement is incorporated in a decree of divorce, "it is manifest that the action of the chancellor should be more than a mere adoption of what the parties have agreed"); *Price v. Price*, 232 Md. 379, 383 (1963) (explaining that "an equity court has the power and right to make and, from time to time, modify an order as to custody and maintenance of a child, which the facts currently justify, despite an agreement on the subject between the parents.").

Judge Alves did not abuse her discretion in rejecting the proffered consent agreement without a hearing, because she recognized that Mr. Sami demurred to the arrangement and because she acknowledged that the agreement eviscerated Mr. Sami's access to the children, which was not in accordance with what she knew of the parties and what she would need to know to do so. When rejecting the agreement, Judge Alves had

information that the three minor children were born in 2009, 2011, and 2015. She also recognized that the terms of the proffered agreement would have prevented Mr. Sami from having access to his children, a result associated with unfitness, which the record did not support.[5] Accordingly, the judge did not err by declining to accept the proffered agreement and scheduling another merits hearing to entertain evidence and to determine custody and visitation.

CONCLUSION

In conclusion, we hold that the court did not err in determining that Paragraph 3 of the prenuptial agreement was valid and enforceable. The court also appropriately found that there was no unfairness in the procurement of the prenuptial agreement and that Paragraph 3 was not unconscionable. The court, further, did not err in declining to take evidence and testimony as to the division of marital property and in rejecting the proffered agreement at the merits hearing as to custody and access of the three minor children.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] A protective order by consent against Mr. Sami was in the record, which did not include any factual findings, as provided by statute. Section 4-506(c)(ii) of the Family Law Article.