

Circuit Court for Prince George's County
Case No. CAD16-40619

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1946

September Term, 2017

MEE RAN YU MORGAN

v.

LARRY MORGAN

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 22, 2019

*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.

Mee Ran Yu Morgan (“Ms. Yu” or “Appellant”), and Larry Morgan (“Mr. Morgan” or “Appellee”), married on January 6, 2010. The parties initially separated in April 2010 and several months later entered into a Separation and Property Settlement Agreement (“First Agreement”). After resuming marital cohabitation, the parties agreed to terminate the First Agreement in 2012. In July 2015, however, the parties entered into a second separation agreement (“Second Agreement”). On November 1, 2016, Mr. Morgan filed a complaint for absolute divorce in the Circuit Court for Prince George’s County and prayed that the Second Agreement be incorporated but not merged into their final divorce decree. Ms. Yu filed a counter-complaint for limited divorce and later moved to set aside the Second Agreement, arguing that the agreement was unconscionable and obtained by abuse of a confidential relationship between the parties.

On October 30, 2017, the circuit court held a merits hearing in the divorce action, and awarded Mr. Morgan an absolute divorce. The court denied Ms. Yu’s motion to set aside the Second Agreement based upon its finding that: (1) no confidential relationship existed between the parties because Mr. Morgan was not the dominant spouse in the marriage and; (2) the agreement itself was not unconscionable. The court entered its judgment of absolute divorce on November 9, 2017, and incorporated the Second Agreement into the divorce decree.

In this appeal, Ms. Yu presents the following questions for our review:

1. “Did the court err by first considering whether confidential relationship existed between the parties before considering whether there existed unconscionability?”

2. “Did the court err by looking at dominance as the only factor in considering whether a confidential relationship existed?”

We conclude that, in determining whether to set aside the Second Agreement, the circuit court did not err in addressing preliminarily the issue of whether a confidential relationship existed between the parties. Regardless, Ms. Yu invited any such error and is foreclosed from raising her first issue on appeal. We hold, however, that the circuit court erred by concluding that no confidential relationship existed between the parties without considering the *Bell* factors. Accordingly, we vacate the judgment of the circuit court and remand for proceedings consistent with this opinion.

BACKGROUND

A. The Separation Agreements

Ms. Yu emigrated from Korea to the United States in 2004, and Mr. Morgan and Ms. Yu married on January 6, 2010. No children were born of their marriage. The parties quickly separated sometime in April 2010 and entered into the First Agreement on June 2, 2010. By its terms, the First Agreement, “[wa]s not executed for the purpose of obtaining a divorce from each other, nor [wa]s it an agreement or consent by either party for the other to obtain a divorce[.]”

At the time of the First Agreement, the parties lived together in an apartment. Under the agreement, Ms. Yu could remain in the apartment, provided she assumed full responsibility for the lease and paid all the rent, but Mr. Morgan would retain sole ownership of real property in Illinois (“Illinois Property”) that he had acquired prior to the marriage. The First Agreement provided that the parties would retain ownership of

personal property owned prior to the marriage and divide any such property acquired during the marriage. Accordingly, Ms. Yu would keep her 2000 Toyota Camry and Mr. Morgan would keep his 1998 Mitsubishi; both parties agreed to maintain their own car insurance as of the date of the agreement. The parties also agreed to release any claim to property divided pursuant to the agreement.

Mr. Morgan agreed to provide Ms. Yu with health, dental, and vision insurance until the entry of any divorce decree. The First Agreement also provided that Ms. Yu would acquire the entirety of the funds in the parties' joint savings account with TD Bank but that all other financial accounts and "[a]ny and all pension, retirement, employee stock ownership, profit sharing plans, annuities or the like shall be the sole and separate property of the party whose name it is in[.]" Mr. Morgan agreed, further, to refrain from interfering with Ms. Yu's ability to obtain U.S. citizenship but would "not agree to support her financially in the event that she is not able to support herself."

After the parties resumed marital cohabitation, however, the parties eventually agreed to "terminate, void and nullify" the First Agreement on June 7, 2012.

B. The Second Separation Agreement

Five years later, in July 2015, the parties entered into the Second Agreement. At the time, Mr. Morgan was working as an engineer earning a yearly income in excess of \$100,000 while Ms. Yu was earning \$8 per hour as a personal care assistant. On July 3, 2015, Mr. Morgan's attorney, Brandon Bernstein, sent Ms. Yu a written letter advising her of his representation of Mr. Morgan in negotiating and formalizing the parties' separation. He clarified that he represented Mr. Morgan, only, and advised Ms. Yu to retain her own

legal counsel to represent her in the matter. Mr. Bernstein attached a written copy of the Second Agreement to the letter for Ms. Yu's signature in the event that she was "satisfied with the [Second Agreement] in its current form[.]" Both parties signed the Second Agreement on July 12, 2015.

The Second Agreement expressed its purpose as follows:

WHEREAS, the Parties agree to separate on or about July 15th, 2015, with the express purpose and intent of ending their marriage, and have shall thereafter live separate and apart without cohabitation. There is no reasonable expectation of reconciliation; and

WHEREAS, the Parties desire to settle and determine all obligations to each other, including their support obligations to one another, property rights, and all other rights, claims, relationships or obligations between them arising out of the marriage relationship or otherwise, making this their final and absolute Agreement.

The parties waived any right to receive alimony. Mr. Morgan would provide Ms. Yu health insurance through his employer-provided insurance plan only until December 30, 2015, rather than until the entry of the divorce decree, as per the First Agreement.

Under the Second Agreement, just as under the First Agreement, Mr. Morgan would retain sole ownership of the Illinois Property, which he acquired prior to the parties' marriage. Unlike the First Agreement, which entitled Ms. Yu to the entirety of the funds in their joint savings account with TD Bank, the Second Agreement related that the parties would "evenly divide" the funds in the account. Otherwise, the agreement stated that the parties had no other joint assets, and that each party would retain "as his or her sole and separate property any checking and savings accounts, retirement assets, pensions, Thrift Savings Plans, 401(k) accounts, stocks, certificates of deposit, bonds, mutual funds, or other financial assets titled in his or her individual name." The parties waived any interest

in the other party's retirement interests and other future expectancies or interests, such as death benefits.

Mr. Morgan would receive the 2011 Hyundai, 1998 Mitsubishi, and 1987 Mazda, and Ms. Yu would have the same 2000 Toyota that she was promised under the First Agreement. With respect to furnishings and personal belongings, the parties agreed to retain that which he or she owned prior to the marriage and evenly divide that which the parties acquired during the marriage. The agreement also indicated that the parties would be responsible for their respective debts, including future debts. The agreement stated that each party was satisfied with one another's financial disclosures, and waived their rights to compel any discovery or inspection of the other's financial records and also any right to an appraisal to evaluate the other's "assets, income, debts, or property prior to entering into th[e Second Agreement]." ¹ Finally, each party also waived the right to a trial by jury in any future legal proceeding arising out of the Second Agreement.

C. The Underlying Divorce Action

On November 1, 2016, Mr. Morgan filed his complaint for absolute divorce against Ms. Yu, which alleged that the parties started living separate and apart on July 15, 2015, with the intent of ending their marriage. He alleged that the parties had entered into the

¹ The Second Agreement also contained a provision titled "Uncontested Divorce," whereby the parties agreed to cooperate with one another "to obtain an absolute divorce on the basis of separation in excess of one year in the Circuit Court for Prince George's County[.]" The agreement expressly indicated, however, that it should not be construed as waiving any grounds for divorce that could arise in the future.

The agreement also stated that the parties would be responsible for their respective attorney's fees. The parties agreed to a specific procedure in the event one of the parties breached the agreement.

Second Agreement, a marital settlement agreement that “resolve[d] all issues of rights and liabilities arising out of the marriage,” and requested that the Second Agreement be incorporated but not merged into their final divorce decree.

On December 9, 2016, Ms. Yu filed an answer and counter-complaint for limited divorce.² In her answer, she alleged that the parties’ separation began on September 26, 2015. Ms. Yu also alleged that she did not recall any agreement that resolved the rights and liabilities arising out of the marriage, but that even if she had, any such agreement was “void and unenforceable as it is unconscionable, inequitable, against public policy, contains bilateral mistake, and is secured by fraud or duress.” Ms. Yu also requested *pendente lite* relief providing for: permanent alimony; “sole and exclusive use of the [m]arital [r]esidence”; enjoinder of Mr. Morgan from “dissipating, wasting, encumbering or transferring in any way any of the parties’ assets that are in his sole name or control so that such property” may be made available to meet any court decree; and an award of attorney’s fees and expert witness fees.

D. Motion to Enforce

On December 21, 2016, Mr. Morgan filed motions to: (1) strike Ms. Yu’s pleadings and her motion for *pendente lite* relief, and (2) enforce the Second Agreement. Mr. Morgan urged the court to strike Ms. Yu’s pleadings (answer and counter-complaint), as well as her motion for *pendente lite* relief, because she had failed to file a Rule 9-203(a) Financial

² Although Ms. Yu captioned her filing as a counter-complaint for absolute divorce, the pleading indicates that she prayed for a limited divorce.

Statement. Further, Mr. Morgan argued that Ms. Yu’s answer and counter-complaint sought relief on matters—such as alimony and division of marital property—that the Second Agreement had already resolved. Accordingly, he asserted that the Second Agreement should be enforced given that Ms. Yu had neither filed a motion to set aside the agreement, nor advanced any “valid reason to justify setting aside” the agreement. On January 24, 2017, the circuit court denied Mr. Morgan’s motions.

Mr. Morgan contested the circuit court’s denial. He filed a motion for reconsideration of the circuit court’s order denying his motions on February 2, 2017, and requested a hearing. The circuit court initially issued an order dated March 16, 2017 (“March 16 Order”), granting Mr. Morgan’s unopposed motion for reconsideration, which, as a result, granted his motion to strike Ms. Yu’s pleadings and her motion for *pendente lite* relief, and Mr. Morgan’s motion to enforce the Second Agreement. Later, on May 8, 2017, the circuit court vacated the March 16 Order upon Ms. Yu’s motion for reconsideration.³

E. Renewed Motion to Enforce

³ Following the March 16 Order, Ms. Yu filed her financial statement on March 23, 2017. A few weeks later, on April 3, 2017, Ms. Yu filed a motion to reconsider the March 16 Order, arguing that Mr. Morgan’s motion for reconsideration did not set forth any new facts or legal arguments. Opposing Ms. Yu’s motion, Mr. Morgan argued that his motion for reconsideration complied with Rule 2-311 and that Ms. Yu “could have and should have raised any such issues with [Mr. Morgan’s] motion in an Opposition, which [Ms. Yu] unjustifiably did not file.” The circuit court issued an order on May 8, 2017, vacating the March 16 Order and noting that Ms. Yu had filed her financial statement. Consequently, the court set a scheduling conference for August 3, 2017.

On August 3, 2017, Mr. Morgan filed a renewed motion to enforce the Second Agreement and requested a hearing. Mr. Morgan attached as an exhibit a copy of the Second Agreement and highlighted that the signature page reflected Ms. Yu’s actual signature and that the agreement contained a provision that referenced its resolution of property issues: “the Parties agree that no provisions of this Agreement pertaining to the settlement of property rights or alimony shall be modifiable by any court.” He argued, therefore, that the Second Agreement should be enforced.

Ms. Yu filed an opposition to Mr. Morgan’s renewed motion. She argued that Mr. Morgan’s renewed motion “merely reiterate[d] his argument from his previous motions” and that, even assuming the Second Agreement “was a true copy of the document signed by [her], the document [wa]s unenforceable as it was procured by fraud[.]”

F. Motion to Set Aside

While Mr. Morgan’s renewed motion to enforce the Second Agreement was pending before the circuit court, Ms. Yu filed, on October 6, 2017, a motion to set aside the Second Agreement and requested a hearing. Ms. Yu sought to set aside the Second Agreement on three grounds: (1) substantive unconscionability; (2) procedural unconscionability; and (3) abuse of confidential relationship. Ms. Yu argued that the agreement was substantively unconscionable because the terms were “heavily one-sided” and the “results [we]re inequitable and unjust.” In support of her argument, Ms. Yu presented a table that compared “what each party got out of the agreement[.]” Referencing the table, Ms. Yu asserted that the agreement provided Mr. Morgan with \$101,787 in assets,

plus the entirety of the funds in his SAC Federal Credit Union checking account, while providing Ms. Yu \$5,870 in assets and no alimony, despite the parties’ “huge” income disparity. Calling these results “shocking,” Ms. Yu argued that Mr. Morgan “reserved to himself [] lopsided rights in the parties’ marital properties” and “obstructed finding[s] of fact[] by not producing any bank statements relating to his SAC bank accounts from 2015.” Ms. Yu also highlighted that Mr. Morgan withdrew \$33,475 from his 401(k) account just a few months prior to the execution of the Second Agreement.

To establish procedural unconscionability, Ms. Yu argued that Mr. Morgan procured her signature through two fraudulent misrepresentations. First, Ms. Yu asserted that Mr. Morgan fraudulently misrepresented that the Second Agreement was the “the same thing” as the First Agreement. To support this, Ms. Yu attached to her motion her sworn affidavit, in which she attested to signing the First Agreement “based on [Mr. Morgan’s] representation that he just needed some time on his own” and also “based on [his] representation that the Second [] Agreement was the same thing as the First [] Agreement.” She also identified the distinctions between the two agreements, arguing that Mr. Morgan misrepresented the true nature of the Second Agreement in order to obtain her signature.⁴

⁴ In Ms. Yu’s motion, she identified the following differences between the First and Second Agreement:

1. Purpose: The First Agreement was not executed with the purpose of obtaining a divorce. In contrast, the Second Agreement was executed with the purpose of ending the parties’ marriage.
2. Modification Provision: The First Agreement provided for modification of the agreement’s provisions under certain circumstances, whereas the Second Agreement did not.

Next, Ms. Yu argued that in signing the Second Agreement, Mr. Morgan fraudulently misrepresented that he had made voluntary financial disclosures to her “when in fact[,] he actively concealed his financial information” from Ms. Yu when he “withdrew \$33,475 from his 401(k) plan without informing” her. As further support, she referenced Mr. Morgan’s deposition testimony, in which he testified that he never showed Ms. Yu his bank statements, he kept his financial documents locked in a file cabinet in their home, and he never informed Ms. Yu that he took out a \$19,300 loan against his 401(k) account.

Ms. Yu also asserted that the parties had a confidential relationship and contended that Mr. Morgan was the dominant spouse in the marriage because, at the time of the Second Agreement, he was 59 years old with a B.S. in Avionics while Ms. Yu, who was 53 years old, was only a high school graduate. Mr. Morgan was also an engineer and had served in the Air Force for 15 years and Ms. Yu worked as a “cashier, personal care assistant, and a factory assembler during [her] past 6 years in the U.S.” In terms of financial dependence, she argued that besides paying for groceries and helping out with car

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3. Equitable Distribution: The First Agreement provided Ms. Yu with all of the funds held in the parties’ joint savings account, whereas the Second Agreement provided for equal division of the funds in the account.
 4. Health Insurance: The First Agreement provided that Mr. Morgan would provide Ms. Yu with health insurance until the entry of any divorce decree while the Second Agreement provided that Mr. Morgan would provide health insurance until December 30, 2015.
 5. Immigration: The First Agreement provided that Mr. Morgan would pay Ms. Yu’s immigration application fees and would not interfere with her ability to obtain citizenship, whereas the Second Agreement was “[s]ilent on the topic.”

insurance payment when Mr. Morgan was having financial difficulties, Ms. Yu “depended heavily on” Mr. Morgan, who “paid [for] most household expenses[,] including rent, utilit[ies], phone, insurances, and [car] bills[,]” and gave Ms. Yu “\$25-35 on occasion[]” when she was unemployed.

Ms. Yu set out Mr. Morgan’s deposition testimony, in which he described how the Second Agreement was drafted “to protect [him]. This wasn’t a joint agreement between [Ms. Yu] and me. . . . There was no input from her in the [First Agreement] that was drafted between my lawyer and me for my protection and there was none in the [S]econd [A]greement again for my protection.” Consequently, Ms. Yu argued that Mr. Morgan abused this confidential relationship by abandoning his role as the provider and using Ms. Yu’s trust to create a separation agreement that protected only himself. Having sought to establish the existence of a confidential relationship, she argued that it was Mr. Morgan’s burden to prove that the Second Agreement was “fair in all respects,” which he had failed to do.

On October 23, 2017, Mr. Morgan filed an opposition to Wife’s motion to set aside the Second Agreement, along with a motion for summary judgment and a motion for Rule 1-341 sanctions. In his opposition, Mr. Morgan argued that the Second Agreement was not substantively unconscionable because it was not facially inequitable and was thus, presumptively valid. Mr. Morgan maintained that Ms. Yu made no attempt to ascertain the martial and non-martial portion of any identified assets. Specifically, Mr. Morgan asserted that the 401(k) “had a premarital component” and that he acquired the Illinois Property in his sole name prior to the marriage. He also argued that Ms. Yu failed to

disclose other assets and benefits she acquired pursuant to the Second Agreement, such as her own two vehicles,⁵ \$900 from the parties' joint savings account, and the continued receipt of health insurance through the end of the year following the separation. Nor did Ms. Yu “consider several circumstances not accounted for in the [Second] Agreement,” including the fact that while he paid for many of Ms. Yu's expenses throughout the marriage, she kept her own assets and contributed “minimally to the marital expenses.”

With respect to procedural unconscionability, Mr. Morgan argued that he never presented the Second Agreement to Ms. Yu but that his attorney personally sent the agreement to Ms. Yu with a letter that contained no misrepresentations. He argued that the agreement did not “purport to represent that the parties traded full financial accounting” and that, nevertheless, Ms. Yu failed to proffer any proof demonstrating her efforts to seek a financial disclosure or prejudice from a lack thereof. **E. 171.** Mr. Morgan insisted that Ms. Yu failed to meet her high burden of proving fraud in both of the misrepresentations she alleged.

G. The Motions Hearing

On October 30, 2017, the Circuit Court for Prince George's County held a hearing on the merits of the divorce action. After preliminary arguments, Ms. Yu sought to call Mr. Morgan as a witness and proffered that his testimony would be relevant to proving the three legal issues supporting her motion to set aside the agreement: substantive

⁵ Mr. Morgan argues that Ms. Yu received a 2000 Toyota Camry *and* a 2017 Honda CRV under the Second Agreement. **E 164.** We note, however, that the Second Agreement provides Ms. Yu with a 2000 Toyota Camry only. **E 99.** We further note that the parties entered into the Second Agreement in 2015.

unconscionability, procedural unconscionability, and abuse of confidential relationship. Reserving on the issue, the court opted to hear the parties' legal arguments, instead.

Largely reiterating her position in the written motion, Ms. Yu argued that the Second Agreement was substantively and procedurally unconscionable, and that Mr. Morgan abused the confidential relationship between the parties. Ms. Yu elaborated that she had to rely on Mr. Morgan because she “was a high school grad with limited English” and could get work that paid only about \$10 to \$12 per hour. Significantly, Ms. Yu asked the court to rule as follows: “to the extent that the [c]ourt finds that there was a confidential relationship, *then* the [c]ourt must rule [] on whether the separation agreement was fair in all respect[s].” (Emphasis added).

Mr. Morgan, who also reiterated the arguments in his written motion, rebuffed Ms. Yu's claims of substantive and procedural unconscionability by emphasizing that Ms. Yu received the agreement from his attorney and that Mr. Morgan “subsidiz[ed] all of Ms. Yu's expenses” during their marriage while Ms. Yu kept all of her own earnings and other assets she acquired. With respect to the existence of a confidential relationship, Mr. Morgan countered that there was no confidential relationship because “the parties were estranged” and Ms. Yu controlled her own finances at the time of the Second Agreement, which she signed without asking any questions. Mr. Morgan concluded by re-emphasizing his ratification argument.

After hearing the parties' legal arguments, the court allowed Ms. Yu to call Mr. Morgan as a witness. Ms. Yu also testified on her own behalf.

1. Mr. Morgan's Testimony

Mr. Morgan began his testimony by explaining the circumstances surrounding the First Agreement. According to Mr. Morgan, the First Agreement was drafted in Virginia with the purpose of allowing the parties to be legally separated but still live under the same roof, as he could not afford to live on his own at the time. He explained that, unlike his intentions in entering into the First Agreement, his intention at the time of the Second Agreement was to obtain a divorce. Still, Mr. Morgan asserted that the First Agreement and the Second Agreement were “the same.”

With regard to the Second Agreement, in May of 2015, Mr. Morgan met with his attorney, Mr. Bernstein, who then drafted the Second Agreement. With Mr. Morgan's permission, Mr. Bernstein mailed a copy of the Second Agreement to Ms. Yu, who had it for a couple of days and read it before signing it without asking any questions. Mr. Morgan admitted that before Ms. Yu signed the Second Agreement, he told her that the First Agreement and the Second Agreement were the “same thing,” but maintained that he “did not make any other representations to Ms. Yu[.]” He testified that he never realized Ms. Yu's trouble with English and assumed that she understood the contents of the Second Agreement given her decision to sign and affix her initial to certain portions of the First Agreement. Mr. Morgan acknowledged, however, that the parties had experienced communication issues throughout their marriage because Ms. Yu's first language was Korean. According to Mr. Morgan, Ms. Yu told him “that she would sign it if it would make [him] happy.” After Ms. Yu signed the agreement, Mr. Morgan gave her a copy.

Mr. Morgan testified that, at the time, he was working as an engineer earning around \$108,000 in annual income. He had a 401(k) account with a balance of about \$49,000 as of June 2017, which consisted, in part, of funds that he had earned prior to marrying Ms. Yu. He testified about having a SAC Federal Credit Union checking account, which he described as a “working account” that he had opened prior to the marriage when he was in the Air Force, but said he was unaware how much money was in his account at the time of the Second Agreement. He opined that the parties’ joint savings account had about \$910-950 in funds at the time of the execution of the Second Agreement. Mr. Morgan also owned real property in Illinois, which he had purchased in 1997, prior to the parties’ marriage. Besides the Illinois Property, Mr. Morgan testified that he did not own any other real property.

With respect to sharing his financial information with Ms. Yu, Mr. Morgan testified that he kept in his home a locked file cabinet that contained his financial documents and other “important records” and that he was the only person with the key to the file cabinet.⁶ But, “[a]nytime [he] discussed any type of financials with her, [she said] it made her head hurt.” When reminded of his deposition testimony in which he had explained that he never disclosed his bank statements to Ms. Yu, Mr. Morgan posited, “[i]f she didn’t want to see them, how could I show them to her?” He further testified that a month before entering into the Second Agreement, he “rolled over [his] past 401[(k)] accounts[, which amounted to \$14,175,] into a single account[.]” He also took out a \$19,300 loan from that 401(k)

⁶ Mr. Morgan testified that he suspected Ms. Yu of having broken into the file cabinet some point.

account; the loan was disbursed into his SAC account. Mr. Morgan related that he “absolutely” told Ms. Yu about the loan prior to borrowing the money because he had explained to her that the loan was necessary to make repairs to their home. Mr. Morgan also testified that prior to signing the Second Agreement, Ms. Yu never asked him for any financial documents, nor did she question him about the balances in his bank accounts and retirement account.

Mr. Morgan testified further that during the marriage, he paid “all the bills,” including rent, electricity, insurance, and their phones. Ms. Yu “temporarily” paid for their car insurance when he was going through financial difficulties and would “occasionally” pay for groceries. He also testified that he continued paying for Ms. Yu’s health insurance, cell phone bill, and, for a time, her car insurance, after the parties executed the Second Agreement.

2. Ms. Yu’s Testimony

Ms. Yu testified that she was employed fulltime at the time she signed the Second Agreement and that she signed it because it was what Mr. Morgan wanted. According to Ms. Yu, Mr. Morgan told her that “the [S]econd [Agreement] was the same as the first one” and that all she needed to do was sign it. Ms. Yu testified that she believed Mr. Morgan when he told her that the two agreements were the same.

Further, Ms. Yu elaborated on her knowledge of Mr. Morgan’s finances prior to signing the Second Agreement. She testified that Mr. Morgan never disclosed any financial information or documents to her and that she did not know that Mr. Morgan had taken out a loan from his 401(k) account. Ms. Yu said that Mr. Morgan disliked when she asked him

about financial information and reprimanded her once for asking about his salary early in their marriage. Other than that, she never asked Mr. Morgan about financials during their marriage. With regard to the Second Agreement, besides asking what the agreement was about, Ms. Yu never asked Mr. Morgan for any financial documents prior to signing the agreement.

Ms. Yu also testified about the extent of her dependence on Mr. Morgan. According to Ms. Yu, she immigrated to the United States in 2004 and later obtained a green card after marrying Mr. Morgan. Ms. Yu explained that Mr. Morgan handled her green card application, including payment of the application fees, because she did not understand the documents and “trust[ed] [her] husband.” Prior to and throughout the parties’ marriage, she earned \$8 per hour.⁷ She testified that she attended school during the parties’ marriage and eventually became a licensed personal care assistant after passing a test, which was administered in English. Accordingly, she deposited her earnings as a personal care assistant into a bank account solely titled in her name, which had a balance in excess of \$7,000 in September 2015. Ms. Yu testified, further, that during the parties’ marriage, she received an \$8,000 money judgment from a personal injury case, in which she was represented by a lawyer she personally retained without Mr. Morgan’s help, and also established a life insurance policy that was worth “a few thousand dollars” at the time of the hearing.

⁷ Ms. Yu testified that, as of January 23, 2017, she earns an hourly wage of \$13, and \$19.50 per hour for overtime.

She confirmed that, as a result of the parties' separation, she acquired all of the funds from their joint savings account, kept her Toyota, and continued to receive coverage under Mr. Morgan's health insurance because "he promised to do so."

3. Court's Ruling

In rendering its oral ruling, the circuit court explained: "the first thing we have to decide is whether or not there is a confidential relationship that exist[s] between these parties." On this issue, the court concluded:

And, so, I have heard the testimony and have had an opportunity to observe the parties and I have heard their testimony regarding the relationship, the nature of the relationship and having done so, I do not find that [Mr. Morgan] was the dominant one and that he had undue influence over the wife to the extent that the [c]ourt can find that a confidential relationship existed.

Next, the court explained, "having reached that conclusion, the [c]ourt obviously now needs to look at the agreement itself and how it came to be." Crediting Mr. Morgan's testimony, the court found that Mr. Morgan offered financial information to Ms. Yu, who "waived the right to see it . . . and as such still entered into this agreement." The court found, further, that Ms. Yu had taken and passed a Health Professional Assistant Test in English and, therefore, had "significant understanding of the English language so that it would not interfere with her ability to communicate with her husband when it came to this [] settlement agreement." The court also found that "the fact that [Ms. Yu] didn't obtain an attorney doesn't make this agreement void" because it was uncontradicted that Mr. Morgan's attorney mailed Ms. Yu a letter, along with the Second Agreement, advising her to retain her own legal counsel and "after having received this letter, . . . the wife signed the agreement."

Based on these findings, the court concluded that “neither undue influence in negotiating the agreement ha[d] been demonstrated, nor d[id] [it] find that the agreement itself [wa]s unconscionable.” Accordingly, the court denied Ms. Yu’s motion to set aside the Second Agreement and granted Mr. Morgan’s motion to enforce the Second Agreement.

The court subsequently proceeded on the merits of the divorce action and ultimately granted Mr. Morgan an absolute divorce. The court entered the judgment of absolute divorce on November 9, 2017, and incorporated the Second Agreement into its judgment.

Ms. Yu subsequently noted her timely appeal to this Court on November 29, 2017. We shall provide additional facts as necessary throughout our examination of each issue on appeal.

DISCUSSION

I.

Motion to Set Aside

Before this Court, Ms. Yu argues that the court erred by addressing the issue of whether a confidential relationship existed prior to determining whether the agreement was fair. She also complains that in determining whether a confidential relationship existed, the court considered only dominance and failed to consider other factors that “tended to show that a confidential relationship existed between the parties.”

Mr. Morgan retorts that the trial court properly found that the Second Agreement was not substantively or procedurally unconscionable. Mr. Morgan posits that Ms. Yu fails to cite to any case law to support her proposition that a trial court must consider certain

factors “seriatim” in determining the existence of a confidential relationship. Moreover, Mr. Morgan adds, the court did not rely solely on an assessment of dominance; rather, the court considered evidence bearing on “other legally-recognized factors bearing on the confidential-relationship question.” He also asserts that Maryland law does not require a trial court to consider the issue of a confidential relationship in a certain order but that the issue, in any event, is inconsequential because the court found that the Agreement was valid.

When an action is tried without a jury, “the appellate court will review the case on both the law and the evidence.” *Shih Ping Li v. Tzu Lee*, 437 Md. 47, 57 (2014) (citing Maryland Rule 8-131(c)). We review the circuit court’s legal conclusions *de novo* and its factual findings under a clearly erroneous standard. *Shih Ping v. Tzu Lee*, 210 Md. App. 73, 96 (2013), *aff’d*, 437 Md. 47 (2014). With regard to the court’s factual findings, “[i]f any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Id.* (citation omitted).

A. Circuit Court’s Adherence to the *Blum* Standard

For many years, the issue of whether a husband and wife could enter into a separation agreement was uncertain. *Blum v. Blum*, 59 Md. App. 584, 593 (1984) (citations omitted). The Maryland legislature finally resolved this issue when it enacted Maryland Code (1984, 2012 Repl. Vol.), Family Law Article (“FL”), § 8-101, which states as follows:

(a) *Deed or agreement.* — A husband and wife may make a valid and enforceable deed or agreement that relates to alimony, support, property rights, or personal rights.

(b) *Settlement*. — A husband and wife may make a valid and enforceable settlement of alimony, support, property rights, or personal rights.

See also Blum, 59 Md. App. at 593. The prevailing view, now, is that “separation agreements . . . are generally favored by the courts as a peaceful means of terminating marital strife and discord so long as they are not contrary to public policy.” *Young v. Anne Arundel Cty*, 146 Md. App. 526, 595 (2002) (quoting *Gordon v. Gordon*, 342 Md. 294, 300-01 (1996)).

A separation agreement is a contract, so “the general principles of contract analysis apply.” *Id.* (citations omitted). Accordingly, “a separation agreement is voidable, and subject to rescission, if it can be shown that it was unconscionable or procured through fraud, duress, or undue influence.” *Id.* (citations omitted). Unconscionability falls within two classifications: “‘procedural’ when there is a lack of meaningful choice in the formation of the contract, or ‘substantive’ when the terms are so one-sided as to ‘shock the conscience’ of the court.” *Shih Ping*, 210 Md. App. at 112.

Separation agreements are presumptively valid except when an agreement is unjust or inequitable on its face or when a confidential relationship exists between the parties. *Bell v. Bell*, 38 Md. App. 10, 14 (1977) (citations omitted). A party asserting the existence of a confidential relationship “bears the burden of showing that it exists.” *Lasater v. Guttmann*, 194 Md. App. 431, 457-58 (2010) (citation omitted) (explaining that Maryland law does not presume the existence of a confidential relationship between husband and wife). “[W]hether a confidential relationship exists between husband and wife [is] a question of fact” and the proponent must show that, “by virtue of the relationship between

them, he [or she] is justified in assuming the other party will not act in a manner inconsistent with his [or her] welfare.” *Bell*, 38 Md. App. at 13-14; *Lasater*, 194 Md. App. at 458-59. “Among the various factors to be considered in determining whether a confidential relationship exists are the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question.” *Bell*, 38 Md. App. at 14 (citations omitted).

If the proponent of the confidential relationship shows the existence of such relationship, “the burden is upon the dominant party to establish that the agreement was fair in all respects.” *Blum*, 59 Md. App. at 595 (citation omitted). Otherwise, “the spouse challenging the agreement bears the burden of proving that it resulted from fraud, coercion or mistake.” *Lasater*, 194 Md. App. at 458-59 (citation omitted).

Ms. Yu cites to this Court’s decision in *Blum* to support the proposition that courts are required to determine the fairness of a separation agreement *before* determining whether a confidential relationship existed between the parties. In *Blum*, this Court announced a “roadmap” for courts assessing the validity of a separation agreement:

What the chancellor should have done was to look at the consideration and determine if the terms were so unfair and inequitable as to require that the agreement be set aside. If they were not, and he held they were not, he should then have considered whether there was a confidential relationship; then he should have considered whether there was duress. If he found there was duress, he should have next considered (1) whether the conditions precedent to setting aside the agreement had been met, including whether the victim had retained the benefits; (2) whether the contract was thereafter ratified; and (3) whether laches applies. Then and only then should he have decided whether to set aside the agreement and reach the issue of a monetary award.

Blum, 59 Md. App. at 602. *Accord Shih Ping Li*, 210 Md. App. at 98-99; *Young*, 146 Md. App. at 598.

We do not read *Blum*'s roadmap as imposing a strict order of operations that courts must follow. Ms. Yu fails to cite to any legal authority, nor are we aware of any, to support a contrary position. Thus, we fail to discern any error in the court's decision to determine preliminarily the existence of a confidential relationship. Assuming, without deciding, that it was error for the court to address this issue preliminarily, Ms. Yu nevertheless invited any such error. *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462 (2013) (“[W]aiver—is [] a *voluntary* act of a party which is inconsistent with the assignment of errors on appeal and normally precludes that party from obtaining appellate review”) (internal quotations omitted) (emphasis in original).). At the motions hearing, Ms. Yu's counsel asked the court, specifically, to determine the existence of a confidential relationship, first. Counsel implored: “to the extent that the [c]ourt finds that there was a confidential relationship, *then* the [c]ourt must rule [] on whether the separation agreement was fair in all respect[s].” (Emphasis added). Accordingly, Ms. Yu is foreclosed from complaining on appeal of an error she invited.

B. Circuit Court's Finding of a Confidential Relationship

Ms. Yu also complains that the circuit court erred in finding that no confidential relationship existed between the parties by focusing on dominance alone, and, therefore, failing to consider Ms. Yu's age, mental condition, education, business experience, state of health, and degree of dependence, and also whether Ms. Yu justifiably assumed that Mr. Morgan would only act in a manner consistent with her welfare.

As discussed, the existence of a confidential relationship between spouses must be established factually. *Lasater*, 194 Md. App. at 458-59; *Bell*, 38 Md. App. at 13. In *Bell*, this Court set forth the various factors that courts must consider in making such a determination. 38 Md. App. at 14. There, the wife had her attorney draft a separation agreement, which she then presented to the husband personally. *Id.* at 11. The husband examined the agreement and made several changes, reducing the amount of his child support obligation and distributing only one of the eleven houses to the wife. *Id.* at 12. The husband then asked the wife to meet him at his office to sign the agreement. *Id.* At their meeting, the husband threatened to reveal the wife’s adulterous activities unless she signed his version of the separation agreement and tape recorded their entire conversation without her knowledge. *Id.* After protesting, the wife read through the husband’s version of the agreement and negotiated several changes before signing it. *Id.* Under the signed separation agreement, the husband settled for \$163,000 in property and the wife settled for \$45,000 in cash and property (\$15,000 in cash plus one of the 11 homes the couple owned as tenants by the entireties). The wife sought to cancel the separation agreement and filed a bill of complaint for cancellation, which the circuit court dismissed. *Id.* at 11.

On appeal before this Court, the wife argued, *inter alia*, that contrary to the circuit court’s conclusion, “a confidential relationship existed between the parties and the burden was on [the husband] to show the agreement was fair in all respects.” *Id.* at 13. In explaining that Maryland does not presume the existence of a confidential relationship between spouses, this Court established that

[a]mong the various factors to be considered in determining whether a confidential relationship exists are the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question.

Id. at 14 (citations omitted). In light of these factors, this Court reviewed the record and ultimately upheld the circuit court’s finding that no confidential relationship existed between the parties:

The testimony shows that [wife] was born in Europe, moved to this country when she was [11] years old, and left school at the age of [15]. Although she is employed as a beautician, she has relatively little experience or expertise in business matters. On the other hand, [the husband] is an experienced businessman, possesses a real estate license, and has a college degree. The chancellor considered these facts, but found that no confidential relationship existed primarily because [the wife] negotiated several changes in the agreement and questioned other provisions, as is clearly shown by the tape recording. He found there was a lack of trust and confidence in the other party necessary to the establishment of a confidential relationship. We are unable to say his decision on this issue was clearly erroneous.

Id. at 14.

Seven years later, this Court in *Blum* reviewed a circuit court’s decision to set aside a separation agreement. 59 Md. App. at 597. In *Blum*, the parties married in 1972. *Id.* at 588. “Both parties were high school graduates and held full-time jobs throughout the marriage.” *Id.* The husband kept a “very tight rein on spending in the household and in all aspects of their lives,” which caused the wife to become discontent with the marriage and to eventually leave the marital home. *Id.* After a short reconciliation, the parties agreed to separate, in 1980. *Id.* An attorney who had previously represented the couple drafted, pursuant to the husband’s directions, a handwritten separation agreement that both parties signed in June. That agreement and was later formalized in a typewritten copy in July (“the

Agreement”). *Id.* About a year later, the husband filed for divorce and asked the court to enforce the Agreement. *Id.* In her answer, the wife alleged that the agreement was “fraudulently induced.” *Id.* After a hearing, the court set aside the Agreement. *Id.* at 589. The court found, *inter alia*, that a confidential relationship existed between the parties based on the husband’s domination as the “forceful personality” in the marriage. *Id.* at 590-91.

On appeal, this Court concluded that sufficient evidence supported the chancellor’s finding that the husband was the dominant force in the marriage. *Id.* at 597. This Court reasoned that the court “carefully illustrated” the husband’s domination:

the regimented shopping expeditions; the required precise parking of the car; washing of the car wheels; budgeting constraints; lack of flexibility in arranging the food and clothing; the relative positions of the parties in the marriage; and [the wife’s] concern that he would not let her leave the marriage. The chancellor also found that . . . [the husband] dictated the terms of the agreement to that attorney.

Id. at 597. This Court ultimately concluded, however, that besides finding that the husband was the dominant partner in the marriage, “*the chancellor failed to consider other factors set forth in Bell v. Bell, supra, namely the age, mental condition, education, business experience, state of health and degree of dependence of the spouse at the time of the execution of*” the agreement. *Id.* at 601 (emphasis added). Accordingly, this Court held that it was error for the chancellor to set aside the agreement and remanded the case for reconsideration. *Id.* at 602.

This Court revisited the *Bell* factors again in *Hale v. Hale*, 74 Md. App. 555 (1988). In *Hale*, the parties married in 1966 and briefly separated in 1975. *Id.* at 560. After

resuming their marriage, the wife discovered that the husband was having an affair, which caused the husband to seek a legal separation from her. *Id.* The wife did not want to dissolve the marriage, but nevertheless agreed to the separation. *Id.* After having their family attorney and friend draft the separation agreement, the parties signed the agreement on June 3. *Id.* The wife received benefits under the separation agreement, including the use of her husband’s company car. *Id.* Although separated, the wife testified that she had hopes of reconciliation until the husband asked her to borrow luggage for a vacation with his girlfriend. *Id.*

The wife met with an attorney and filed suit in the circuit court, seeking rescission of the contract and damages for fraud and negligent misrepresentation. *Id.* at 561. The circuit court ordered rescission of the separation agreement.⁸ *Id.* The court found that the husband was “the dominant party in a confidential relationship with his wife,” and he obtained the agreement by abusing this relationship. *Id.* at 564. This finding shifted to the husband the burden of proving that the terms of the agreement were fair—a burden he failed to meet. *Id.*

On appeal, this Court addressed, *inter alia*, whether the circuit court’s finding that the husband breached a confidential relationship with his wife was clearly erroneous. *Id.* at 563. Looking to the *Bell* factors, this Court observed that, although the trial court did not mention the ages of the parties in its oral opinion, the court made findings with respect to the other factors: (1) the wife had very limited business experience with one year of

⁸ The circuit court also awarded damages on the basis fraud. *Id.* at 561.

community college education; (2) she “managed the household, but did so with the budget her husband provided her” and she never had her own bank account prior to their separation; (3) the wife was “generally aware of her husband’s wealth and property” but “was not sufficiently informed for the purpose of making the ‘ultimate decision’ to sign the agreement”; (4) the wife was in poor physical condition at the time of the agreement; and (5) the wife “repose[d] trust in her husband, as she always had, to take care of her and [their] only child.” *Id.* at 565-66. This Court observed, further, that the court found that the wife’s “participation in forming the agreement was minimal[,]” “she did not understand the agreement[,]” nor did she understand that the agreement was final. *Id.* at 566-67. Concluding that all of these findings were supported by the wife’s testimony and other evidence in the record, this Court affirmed the trial court’s finding that a confidential relationship existed between the parties. *Id.* at 565-67.

Returning to the case at bar, we agree with Ms. Yu’s contention that the circuit court erred by failing to consider the *Bell* factors in concluding that no confidential relationship existed between the parties. *See Blum*, 59 Md. App. at 601. The judge relied solely on its finding that Mr. Morgan was not the dominant spouse in the parties’ marriage. Unlike in *Hale*, however, the instant case does not present a situation in which the circuit court merely failed to mention only one of the *Bell* factors, 74 Md. App. at 564-66, but rather, as in *Blum*, “failed to consider other factors as set forth in *Bell v. Bell*, *supra*, namely the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse at the time of the execution of the [Second Agreement].” *Blum*, 59 Md. App. at 601.

The circuit court also failed to explain the basis for finding that Mr. Morgan was not the dominant force in the marriage, and based on the record, it is difficult to understand how the court reached this conclusion. The transcript reveals that, at the time of the Second Agreement, Mr. Morgan worked as an engineer with a yearly income exceeding \$100,000, while Ms. Yu, a high-school graduate and Korean immigrant who was not as proficient in English, was earning significantly less than Mr. Morgan at \$8 per hour as a personal care assistant. Further, there was testimony that Mr. Morgan not only handled Ms. Yu's green card application but also handled the parties' living expenses, besides Ms. Yu occasionally paying for groceries. According to Mr. Morgan himself, he even restricted Ms. Yu's access to his financial documents by keeping them in a locked file cabinet in the parties' home.

Significantly, Mr. Morgan testified that his attorney drafted the terms of the Second Agreement, and there is no evidence in the record showing that Ms. Yu participated in the formation of the Second Agreement in any way. *Compare Bell*, 38 Md. App. at 14 (upholding finding of no confidential relationship when supported by evidence that, although the wife immigrated from Europe and was a high school grad with relatively little business experience, she negotiated several changes to the separation agreement and questioned certain provisions therein), *with Blum*, 59 Md. App. at 597 (upholding finding of domination on the basis of evidence that husband dictated the terms of the separation agreement to his attorney), *and Hale*, 74 Md. App. at 566-67 (upholding finding of a confidential relationship because the evidence showed that wife's participation in forming the agreement was minimal"). Ms. Yu signed this agreement pursuant to Mr. Morgan's representations that the First Agreement and the Second Agreement were the same despite

significant differences. For instance, the First Agreement stated expressly that its execution was not intended to obtain a divorce, whereas the Second Agreement expressly stated a purpose of ending the parties' marriage. The First Agreement also provided Ms. Yu with all funds held in the parties' joint savings account, whereas the Second Agreement provided for an equal division of such funds. Under the First Agreement, Mr. Morgan agreed to provide Ms. Yu with health insurance until the entry of a divorce decree but under the Second Agreement, he only promised to provide her insurance for several months, until December 30, 2015. In sum, the terms of the Second Agreement produced a larger disparity in benefits between the parties as compared to the First Agreement. This is because, by the time of the Second Agreement, the parties, particularly Mr. Morgan, had accumulated more assets (tangible and intangible), yet Ms. Yu would receive a lesser share of the parties' joint account, along with the same 2000 Toyota Camry that was promised to her under the First Agreement. Ms. Yu testified that she did not ask questions prior to signing the Second Agreement because she trusted Mr. Morgan.

In sum, we hold that the circuit court did not err in addressing preliminarily the issue of whether a confidential relationship existed between the parties. Regardless, Ms. Yu invited any such error and is foreclosed from raising her first issue on appeal. The circuit court did err, however, by concluding that no confidential relationship existed between the parties without considering the *Bell* factors. We, therefore, vacate the judgment of the circuit court and remand the case for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
VACATED; CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLEE.**