MPT-2 Eastwood v. Eastwood

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September 2020
MPT-2 File

Eastwood v. Eastwood

West & Martin LLP
Attorneys at Law
300 McCormack Place
Franklin City, Franklin 33703

MEMORANDUM

To: Examinee
From: Christina Ruiz
Date: September 9, 2020
Re: Eastwood v. Eastwood

Louisa Eastwood and her husband, William Eastwood, are getting a divorce after 14 years of marriage. Louisa has asked for our help, and we have agreed to represent her. William has indicated that he intends to enforce the terms of the premarital agreement that they signed before they married.

Louisa is extremely concerned about the premarital agreement and believes that it is very one-sided in William's favor. In particular, she is concerned about whether she has any right to the marital home and whether she is entitled to receive spousal support. If she cannot get spousal support, she will receive only child support for their two minor children pursuant to the Franklin Child Support Guidelines, which will not be adequate to sustain their current lifestyle. Our law firm will need to assess all issues relating to the Eastwood divorce, but I would like you to focus only on the validity of the premarital agreement.

Please draft an opinion letter to Louisa analyzing the enforceability of the premarital agreement and advising her of the likelihood of successfully challenging the premarital agreement under Franklin law. Your letter should follow the attached firm guidelines for opinion letters.

West & Martin LLP
Attorneys at Law

OFFICE MEMORANDUM

To: All attorneys
From: Christina Ruiz
Date: June 8, 2017
Re: Opinion letters to clients

An "opinion letter" provides advice to a client concerning a matter and is written in a letter format.

The firm follows these guidelines in preparing opinion letters to clients:

- Do not include a separate statement of facts.
- Address each legal question independently.
- Analyze the issues raised by each question and provide the client with your conclusion regarding each legal issue presented.
- Be sure to cite applicable legal authority.
- Explain how the relevant authorities combined with the facts lead to your conclusions.
- Bear in mind that, in most cases, the client is not a lawyer. Use language that is understandable to a nonlawyer. Structure your discussion in a way that allows the client to follow your reasoning and the logic of your conclusions.

West & Martin LLP
Attorneys at Law

MEMORANDUM TO FILE

From: Christina Ruiz
Date: September 7, 2020
Re: Eastwood v. Eastwood; meeting with Louisa Eastwood

Today, I met with Louisa Eastwood (formerly Louisa Ricci), a 46-year-old woman, to discuss her situation. She and William Eastwood (age 48) have been married for 14 years and have two children, Max (age 12) and Hazel (age 10). Since Hazel's birth, Louisa has not worked outside the home and has been primarily taking care of the family. William works full-time and supports the family financially.

Louisa was recently diagnosed with rheumatoid arthritis (RA). Rheumatoid arthritis is an autoimmune disorder that attacks a person's joints and non-joint structures like skin, eyes, lungs, and the heart. In Louisa's case, RA has affected her ability to walk, read, lift, and move without pain. RA is a chronic and progressive disease that may affect Louisa's ability to work.

Louisa and William have been having marital problems for some time. Two weeks ago, Louisa told William that she thought it was time to end their marriage. The next day, William saw his lawyer and initiated divorce proceedings. He then sent Louisa an email demanding that she move out of the family home if she plans to go forward with a divorce. William also stated that he intends to fully enforce the terms of their premarital agreement.

Louisa is very worried about the premarital agreement because it gives her no rights in the marital home and also precludes her from getting any spousal support. Louisa is concerned that she will not be able to support herself and the children because her RA might affect her ability to work. Without the agreement, Louisa would have a claim to the home under the 50-50 presumption in Franklin's equitable distribution statute. She would also have a good case for an award of spousal support.

Signing of the Premarital Agreement in 2006

Louisa is highly educated and has a PhD in computer science. Louisa met William when he taught a business class as an adjunct professor at Franklin State University while running his family's business. At the time, Louisa was a full-time professor there. She is not from a wealthy

family and had a substantial amount of student loan debt but was earning a decent salary. She owned a car and lived in a rented apartment.

William, also highly educated with a BA and an MBA, is from a wealthy family that owns a real estate development business, which William runs. He was previously married but has no children with his ex-wife. When he and his ex-wife divorced after just two years, his ex-wife was awarded a large amount of spousal support for a period of three years. William always felt that the award was unfair and was determined to get a premarital agreement if he ever remarried.

After dating for a few months, William and Louisa began to discuss marriage. William told Louisa that if they decided to marry, he wanted a premarital agreement. He explained that having a premarital agreement would reassure him that Louisa was not marrying him for his money as he believed his first wife had. He also said that the premarital agreement would protect Louisa from any business debts that he might have or incur in the future.

Four months before they married, William asked Louisa for a comprehensive list of her assets and debts, with a current value for each. A few days later, Louisa gave William her list, which was short and simple: she owned a car, had small checking and savings accounts, and owed student loan debt. In turn, William gave Louisa a six-page list of his assets, which included several real estate holdings and investment accounts, and also a list of business debts such as existing mortgages on his properties.

Louisa had no experience with premarital agreements, and despite being highly educated, she did not know much about William's business or his assets. She does not have any real interest or expertise in economics or finance. She understood that William was well off but did not have a full grasp of his financial situation.

After the lists were exchanged, William worked with his longtime lawyer to draft a premarital agreement. There were no further discussions between William and Louisa about a premarital agreement until about a month later when William presented the agreement to her and asked her to read it and sign it if she agreed to the terms.

When Louisa told William that she didn't really understand the terms of the agreement, William again told her that he wanted it primarily to be sure that she loved him, not his money, and also to protect her from his business creditors. She asked William if she should get a lawyer. William said that he would be happy to arrange for her to meet with his own lawyer, who had drafted the agreement, so that his lawyer could explain it to her. Alternatively, William said that

he would pay for an independent lawyer if Louisa really felt that was necessary. Louisa told William that she trusted him but would like some time to read the agreement more carefully.

Louisa did not consult a lawyer about the agreement. She says she really did not understand the consequences of signing the agreement, but she loved William and wanted to make him happy. She knew that he had been hurt and felt angry as a result of his divorce, and she wanted to assure William that she was not marrying him for his money. Having a lot of money was never important to Louisa.

A few days after Louisa received the agreement, William asked her if she was ready to sign it. She agreed. They went to a bank and signed the agreement before a notary public. They each kept a copy, and William gave a third copy to his lawyer. William and Louisa married three months later without any further discussion of the premarital agreement.

Events after the Marriage

After they married, Louisa continued to work full-time as a professor at Franklin State University and used her earnings to contribute to household expenses. William, however, always paid a larger share of their marital expenses, given his greater income.

Two years later, in 2008, she gave birth to their first child, Max, taking three months of parental leave before returning to work. After Hazel's birth in 2010, William urged Louisa to stop working and stay home with the children. He told her that she would never need to worry about money because he had plenty to support the family. She took what she intended to be a one-year leave of absence but then never went back to work. She was very reluctant to give up her teaching position, because the computer science field changes so quickly and one has to keep up with current developments. In addition, she gave up opportunities for promotion that she would have had if she had stayed at the university. But again, William told her not to worry—he would always take care of her and their children.

In 2014, William handled the purchase of their home on Evergreen Street. The children were six and four then. William paid cash for the home and put the title in his name alone.

After Louisa stopped working outside the home, she had no independent income; William paid all their expenses. He was always very generous with money and bought pretty much anything Louisa wanted. He also made monthly deposits in a savings account from which Louisa paid household bills. When they separated two weeks ago, the account, which is in Louisa's name only, had a balance of $5,000.

Email from William Eastwood

TO: Louisa Eastwood <Louisa.Eastwood@cmail.com>
FROM: William Eastwood <William.Eastwood@cmail.com>
SENT: September 1, 2020, 7:00 a.m.
SUBJECT: Divorce

Louisa,

Last week, you broke my heart when you told me you wanted a divorce. I know you are serious, so I went to see my lawyer.

As I told you before we got married, our premarital agreement is ironclad. It makes crystal clear that you have no right to any property that is titled in my name. The house is titled solely to me. If you won't reconcile with me, you should be prepared to move out of my house immediately.

Moreover, our premarital agreement explicitly waives your right to receive any spousal support. I will provide child support pursuant to the Franklin Child Support Guidelines but not a penny more.

I hope you will come to your senses and reconsider. I still love you and want you back.

William

Excerpt from Premarital Agreement between William Eastwood and Louisa Ricci

* * *

1. Each party specifically acknowledges that he or she enters into marriage in reliance upon the validity of this agreement and would not have entered into the marriage in the absence of this agreement.
2. All the property and income of each party owned at the time of the marriage, and all property and income acquired in the sole name of either party after the marriage, shall remain the separate property of each of them.
3. Except as the parties may otherwise later agree in writing, a party's "separate property" shall be any and all property including, but not limited to,

   (a) all property acquired by a party prior to the parties' marriage, including, specifically, the property set forth in William Eastwood's Schedule A List of Assets and Obligations, attached, and Louisa Ricci's Schedule B List of Assets and Obligations, attached;

   (b) all appreciation of assets listed in Schedule A or B;

   (c) a party's interest in a business or professional services practice regardless of when such interest was acquired, the form of organization of the business, or the source of funds for acquisition of the interest;

   (d) all property that is titled solely in one party's name, regardless of when purchased; and

   (e) the party's earnings, including salary and investment income.
4. Upon divorce, each party shall release or relinquish all claims to and rights in the separate property of the other.
5. Neither party shall make any claim for spousal support from the other party.
6. Each party acknowledges that he or she has had ample opportunity to consult with independent legal counsel regarding the effects of this agreement, the rights and privileges waived and granted under this agreement, and the binding effect of the present and future consequences of this agreement; and each party acknowledges his or her complete understanding of the legal effects of the agreement.

* * *

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Excerpts from Franklin Premarital Agreement Act, effective date July 1, 1987

§ 101 Definitions

As used in sections 101 to 108:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

§ 102 Agreement to be in writing and signed

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

. . .

§ 104 Subjects of contract allowed

(1) Parties to a premarital agreement may contract with respect to

(a) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or non-occurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support shall not be adversely affected by a premarital agreement.

§ 105 Agreement unenforceable; proof

(1) A premarital agreement is not enforceable if the person against whom enforcement is sought proves any of the following:

(a) The person did not execute the agreement voluntarily.

(b) The agreement was unconscionable when it was executed.

(2) The issue of whether a premarital agreement is unconscionable shall be decided by the court as a matter of law.

(3) The court may refuse to enforce a provision regarding spousal support if enforcement would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed. If a provision regarding spousal support or the application of that provision to a party is found by the court to be unenforceable, the provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application, of the agreement that can be given effect without the unenforceable provision.

Richards v. Richards
Franklin Court of Appeal (2010)

A husband appeals from a divorce judgment, asserting that the trial court erred in concluding that the parties' premarital agreement was unenforceable because the wife signed it involuntarily. We conclude that the trial court correctly ruled that the agreement was unenforceable because the wife did not enter into it voluntarily as required by the Franklin Premarital Agreement Act (FPAA) § 105. We therefore affirm the trial court on that ground and need not address whether the agreement was also unconscionable.

Liam and Stella Richards were married in 1989. Both had been married before; Liam has one child from his first marriage. They have two children together. In 2007, Liam filed for divorce.

Before they were married, the parties entered into a premarital agreement, under which they each purported "to waive any present or future interest in the separate real and personal property of the other and any claim to spousal support." The parties executed the premarital agreement the day before they were scheduled to fly to Hawaii for their wedding. The validity of the premarital agreement was the primary issue at trial.

The trial court ruled that the premarital agreement was unenforceable because it was involuntary under FPAA § 105(1)(a). The trial court divided the parties' property 50-50 without regard to the terms of the premarital agreement. Stella was not seeking any spousal support, so the trial court did not consider the separate issue of the waiver of spousal support.

There was conflicting testimony about the facts surrounding the execution of the premarital agreement. Liam testified that the idea of being married and the idea of a premarital agreement came up at the same time, a month before they were married. He had his lawyer, who had handled his earlier divorce, draft the agreement. Two weeks before the wedding, the proposed agreement was given to Stella. Liam testified that Stella never said that she needed more time to consult with an attorney about it, and he believed that she had a "clear picture" of his business affairs and assets.

Stella, on the other hand, testified that although she agrees that Liam gave her the agreement two weeks before the wedding, she told him to "make sure that my attorney is there if we sign this." Stella testified that she did not consult her attorney because she believed changes could be made at the signing. It is undisputed that her attorney was not present when she arrived at Liam's lawyer's office to sign the agreement the day before they were to leave for their wedding. When she asked where her attorney was and expressed doubts about signing the agreement in his

absence, Liam responded, "Go ahead and sign it. My lawyer can take care of this for both of us." When she said again, "I think I should call my attorney," she testified that Liam told her, "The wedding's on. You've told everyone we're getting married. Our guests already have their plane tickets. We are leaving tomorrow morning. Go ahead and just sign it." Stella testified that Liam reassured her that she "was his whole world, and that he would love me forever." The court made extensive findings relating to the premarital agreement, essentially adopting Stella's version of events.

Section 105 of FPAA controls this case. We begin with the definition of voluntariness. The term "voluntarily" is not defined in the statute; accordingly, we apply its ordinary meaning. The word "voluntarily" ordinarily means "in a voluntary manner: of one's own free will." Webster's Third New Int'l Dictionary 2564 (unabridged ed. 2002). Similarly, in law, "voluntarily" is understood to mean "intentionally; without coercion." Black's Law Dictionary 1605 (10th ed. 2009). Those definitions suggest independent action, free from coercion and intimidation; an element of "choice" is evident.

Franklin cases that discuss "voluntariness" in the context of premarital agreements focus on the conditions and circumstances of the formation of the agreement. Although voluntariness is highly dependent upon the particular facts at issue, courts have often applied the following factors:

(1) whether circumstances in signing the agreement, such as the shortness of time between execution and the marriage, indicate coercion or lack of knowledge

(2) whether there was any surprise or malfeasance in presentation of the agreement

(3) the presence or absence of an opportunity to consult independent counsel

(4) whether there was full disclosure of assets and obligations

(5) the parties' understanding of the rights being waived under the agreement

In *Kosik v. Kosik* (Fr. Ct. App. 1995), the court held that a premarital agreement was not voluntarily entered into, thus rendering the agreement unenforceable, because the husband did not give the wife a reasonable opportunity to be informed of the consequences of the agreement. In *Kosik*, the parties married about a month after their first date. The husband had his attorney prepare the premarital agreement. The husband held on to the agreement until the Friday before the wedding on Monday. The wife, who had a high school education and very limited business experience, was not advised to get her own attorney and had virtually no time to consider the agreement before she signed it. The court found that the timing of the execution of the agreement

was coercive and that the husband intentionally orchestrated the signing to prevent the wife's understanding and knowledge of the document.

In *Brandt v. Brandt* (Fr. Ct. App. 2006), the wife had a wide range of experience in business, including great familiarity with the husband's business. She was told of the need for a premarital agreement nine months before the wedding; she knew that its purpose was to preserve the husband's assets for his children from a prior marriage and to protect her from his business debts; she received a copy of the agreement at least seven months before the wedding; and she was repeatedly advised to seek independent counsel. Under those circumstances, we held that the wife had had the obligation and the opportunity to protect her own interests. Thus, the agreement was valid despite the fact that the wife never read the agreement before the day she signed it.

Applying the voluntariness factors to the case at hand, we conclude that Stella has met her burden of proving that the premarital agreement was not entered into voluntarily. The trial court found, and the evidence demonstrates, that the parties first discussed a premarital agreement only a few weeks before their wedding, and then only in general terms. When Liam said that he was going to have his lawyer arrange it, Stella told him to be sure that her attorney was also present. On the day before they were to leave for their wedding, Liam called Stella and told her to come to his lawyer's office to review and sign the agreement. Although Stella had a copy of the agreement for two weeks, she had not reviewed it with her attorney because she expected her attorney to be present when it was executed. When Stella arrived, she was surprised to find that her attorney was not present as she had requested. Liam reassured her that his lawyer could take care of the matter for both of them. When she continued to express reluctance to sign, Liam pressured her to sign the agreement, including making statements about guests having already bought their plane tickets.

The evidence also shows that Stella lacked sufficient knowledge of the extent of the property affected by the agreement. The trial court found that Stella had limited knowledge of Liam's finances. For example, Stella testified that she had general knowledge of the existence of Liam's retirement accounts, but Liam did not inform her of their value. Moreover, as the trial court found, Stella had limited experience in business matters and was relatively unsophisticated in financial matters. Such circumstances created a sufficiently coercive environment to render her agreement involuntary. The trial court did not err in refusing to enforce the premarital agreement.

Affirmed.

In re Marriage of Federman
Franklin Court of Appeal (2011)

Anne Federman appeals the trial court's division of property in her divorce from Peter Federman. The trial court enforced the parties' premarital agreement, which was signed by Anne, a 19-year-old pregnant woman, before she married Peter, age 38, a man twice her age. The issue on appeal is whether the parties' premarital agreement is unconscionable and therefore unenforceable. We reverse and remand.

This case presents an issue of first impression in Franklin. This court is asked to address explicitly the unconscionable prong of the Franklin Premarital Agreement Act (FPAA). The court finds that the agreement here, in which each party waived any right to property acquired by the other during the marriage, was unconscionable at the time of execution. In a divorce in which there is not a premarital agreement, there is a presumption under Franklin law that property acquired during the marriage will be divided 50-50. Franklin Family Code § 14(a).

Anne and Peter began dating when she was an 18-year-old college freshman. Shortly after they started dating, Anne became pregnant and Peter proposed that they get married. Before their marriage, Peter asked Anne, who had just turned 19, to sign a premarital agreement prepared by his attorney, which provided that each party would retain his or her own property in the event of a divorce. Anne went to Peter's attorney's office, where the attorney reviewed the agreement with her. The agreement was silent about the nature and value of Peter's assets. Despite not understanding the agreement, Anne signed it.

Anne dropped out of college when they married and had their first child. They had a second child three years later. Anne never earned her college degree and only worked in low-wage jobs on a sporadic basis. Peter worked regularly as a licensed plumber and earned a pension.

Anne requested that the trial court hold the premarital agreement unenforceable. The trial court denied her request. Consequently, the court awarded Peter the full value of the house, which he had purchased during the marriage in his name only, as well as his two vehicles and his pension. The trial court noted that under FPAA, Anne had the burden of proving by a preponderance of the evidence that the premarital agreement was unenforceable because it was unconscionable when executed. The trial court concluded that Anne had not met that burden. If the agreement were not in effect, Anne would have had a significant claim to the home under the 50-50 statutory presumption. *See* Franklin Family Code § 14(a).

Standard principles regarding contract formation and interpretation apply to premarital agreements as well as to other contracts. Generally, "a contract is unconscionable if there was a gross disparity in bargaining power, which led the party with the lesser bargaining power to sign a contract unwillingly or unaware of its terms, and the contract is one that no sensible person would accept." *Rider v. Rider* (Fr. Ct. App. 2000). This standard is consistent with the legislative history of FPAA, which states that "unconscionability includes protection against one-sidedness that rises to the level of oppression. . . ." (Legislative history of FPAA § 105(1)(b), cited in *Rider.*)

The issue of unconscionability is a matter of law under § 105(2) for the judge to decide. Here, although Peter does not appear to be highly educated, there still was a gross disparity in life experience between him and Anne given their relative ages. Peter personally benefited greatly from the premarital agreement by shielding assets that would otherwise be subject to equitable 50-50 distribution between the parties, with no comparable benefit to Anne. Anne dropped out of college and did not further her education, thereafter either caring for the couple's children or working at low-wage jobs. The property division was entirely in Peter's favor, as he was the only one bringing any assets into the marriage. Peter had all the benefits; Anne had all the burdens by comparison, resulting in a grossly unjust outcome. In light of the circumstances surrounding the premarital agreement's execution and its one-sided nature in favor of the dominant party, Peter, we conclude that the agreement was unconscionable at the time of its execution as a matter of law and thus void.

We reverse the trial court's division of property and remand for the trial court to divide the marital property in a manner consistent with Franklin law.

Reversed and remanded.

Hughes v. Hughes
Franklin Court of Appeal (2017)

Janet Hughes appeals the trial court's refusal to enforce the spousal support waiver provision of a premarital agreement between the parties and its decision to award spousal support in its divorce decree. Janet and Terence Hughes married in 2007. At the time of their divorce, both were 57 years old. Prior to their marriage, the parties signed a premarital agreement that included a provision stating that "in the event of separation or dissolution, both parties desire that neither be required to pay spousal support to the other." The trial court ordered Janet to pay Terence "spousal support of $800 per month until such time as he dies or remarries." For the reasons set forth below, we affirm the trial court's decision.

On appeal, Janet contends that the trial court erred in not enforcing the spousal support waiver provision in the premarital agreement. She cites § 104(1)(d) of the Franklin Premarital Agreement Act (FPAA), which provides that the parties to a premarital agreement may contract with respect to the "modification or elimination of spousal support." She argues that because there has been no finding that the premarital agreement was involuntary, unconscionable, or entered into without a reasonable opportunity to consult with counsel under FPAA § 105, the spousal support waiver provision must be upheld.

FPAA § 105(3) provides for severance of unenforceable provisions regarding spousal support. As in this case, a court may refuse to enforce a provision regarding spousal support in a premarital agreement where enforcement would result in "substantial hardship" to a party due to a "material change in circumstances" that arose after the premarital agreement was executed, notwithstanding the fact that the agreement might otherwise be enforceable under § 105. In such instances, the unenforceable provision is severed and the remainder of the agreement shall be enforced.

At the time that Janet and Terence executed the premarital agreement, both were gainfully employed and in good health. However, three years into the marriage, Terence lost his job and his retirement benefits, and he is now partially paralyzed as a result of a car accident two years ago. These events constitute a "material change in circumstances," such that enforcing the spousal support waiver would result in substantial hardship to Terence.

Affirmed.

Type of MPT: Opinion Letter to Client

Issue I – Was the Premarital Agreement Entered Into Voluntarily?
Issue II – Is the Premarital Agreement Unenforceable Because it Was Unconscionable When Entered Into?
Issue III – Would Enforcing the Spousal Support Waiver Provision Result in a Substantial Hardship Because of a Material Change in Circumstances Arising After the Premarital Agreement Was Signed?

GRADING GRID – MPT092020Q2G (EASTWOOD V. EASTWOOD)

Use this Grid to self-assess your response. Award your response a 0 or 1 depending on whether your answer includes the statement in each box below. Your statements do not need to exactly match the statements provided here. Instead, award your response a "1," if your response does the following:

- Identifies the legal buzz word(s) in the rule and provides a general definition(s); and
- Explains how the facts match with the rule statement(s) using explicit links (i.e., rule + "is satisfied/not satisfied" + because + facts).

Type of MPT: Opinion Letter to Client

Introduction		**0 or 1**
Roadmap and General Rule	Thank you for entrusting us with your legal business during this difficult time. We understand that you would like the firm to analyze the validity and enforceability of the premarital agreement that you and William Eastwood signed before your marriage. Mr. Eastwood has filed for divorce and has told you that he intends to enforce the terms of the premarital agreement, which gives you no rights in the marital home and precludes you from getting any spousal support. You have asked us to advise you on whether you have any right to the marital home or to receive spousal support.	
	As a preliminary matter, premarital agreements are effective upon marriage. Franklin Premarital Agreement Act (FPAA) §101(1). They must be in writing, must be signed by both parties, and are enforceable without consideration. FPAA §102. A wide range of topics can be covered in premarital agreements, including spousal support. FPAA §104(1)(d). Franklin specifically carves out child support and says that premarital agreements may not adversely affect it. FPAA §104(2).	
Application	Here, the agreement was in writing and signed by both you and Mr. Eastwood, so it was properly executed. The law permits it to affect spousal support but it cannot adversely affect child support. Thus, while the agreement is relevant to your spousal support, you do not have to be concerned about the effect of the premarital agreement on Mr. Eastwood's responsibility to pay child support.	
	There are two grounds upon which we could argue that the agreement is unenforceable: (1) that it was not entered into by you voluntarily, and (2) that the agreement was unconscionable when it was executed. Unfortunately, as I will more fully explain below, based on my research of the law and review of the facts, I do not believe that either of these arguments is likely to succeed.	
	If these arguments don't succeed, there is a third argument that we could make: (3) we could argue that the court should refuse to enforce the provision regarding spousal support on the grounds that it would result in substantial hardship for you based on a material change in circumstances arising after the agreement is signed. I believe that it is more likely than not that this argument will succeed, as I will explain below.	

I. Was the Premarital Agreement Entered Into Voluntarily?		**0 or 1**
Rule	A premarital agreement is not enforceable if the person against whom enforcement is sought proves that the person did not execute the agreement voluntarily. FPAA §105(1)(a). Courts in Franklin have focused on the conditions and circumstances at the time of the formation of the premarital agreement to determine voluntariness.	
	Courts have considered five factors: (1) whether circumstances in signing the agreement, such as the shortness of time between execution and the marriage, indicate coercion or lack of knowledge, (2) whether there was any surprise or malfeasance in presentation of the agreement, (3) the presence or absence of an opportunity to consult independent counsel, (4) whether there was full disclosure of assets and obligations, and (5) the parties' understanding of the rights being waived under the agreement. *Richards v. Richards*, (Fr. Ct. App. 2010).	
Rule Explanation	In the *Richards* case, the court held that the premarital agreement was not voluntary because the circumstances created a sufficiently coercive environment — Mrs. Richards received the agreement just two weeks before the wedding, she was unable to review it with her attorney before signing, although she made that request, and she was pressured by her husband's statements that his lawyer could "take care of this" for both of them and that guests already had bought plane tickets to travel to their wedding. The evidence also showed that Mrs. Richards had limited knowledge of the defendant's finances.	
	In contrast, in the case of *Brandt v. Brandt* (Fr. Ct. App. 2006), the court found that the agreement was voluntary because the wife had the obligation and opportunity to protect her own interests where she was experienced in business, given the agreement seven months before the wedding, and told that its purpose was to protect her husband's assets for his children from a prior marriage as well as to protect her from his business debts, and she was repeatedly advised to seek independent counsel. The agreement was valid even though she never read it before the day she signed it.	
Application	Here, based on the past cases, the circumstances surrounding the signing of the premarital agreement most likely point to it being voluntarily entered into. First, there are not sufficient facts to indicate coercion because you were given the agreement three months before you married, unlike in *Richards* where the wife was given the agreement just two weeks before the wedding, or in *Kosik v. Kosik* (Fr. Ct. App. 1995) (cited in *Richards*), where the agreement was presented to the wife three days before her wedding, and she was advised not to get her own attorney.	

Application *(continued)*	Second, there was no surprise in the presentation of the agreement because Mr. Eastwood had discussed his desire to have a premarital agreement before he presented you with a draft; he did not object when you said that you needed time to review it carefully. Indeed, he suggested that you could either meet with his lawyer, who would explain the agreement, or that he would pay for you to hire your own lawyer.	
	Third, there was an opportunity for you to consult independent counsel because, in addition to Mr. Eastwood agreeing to pay for your lawyer, there is no evidence that he attempted to wait until the last moment to present you with the agreement. In fact, you signed it and had a copy in your possession for three months before you were married. This is distinguishable from *Richards* because there the husband made statements designed to prevent his future wife from taking the time to seek her own attorney and even told her that his attorney could take care of things for both of them.	
	Fourth, there was full disclosure of assets and obligations because you and Mr. Eastwood exchanged substantially complete asset and debt statements four months before the wedding; there is no indication that Mr. Eastwood was hiding assets. This is unlike *Richards*, where the wife had limited knowledge of her husband's finances.	
	Based on the fifth factor, there are certain facts that we could raise to support an argument that you did not fully understand the rights being waived. The agreement was drawn up by Mr. Eastwood's longtime lawyer, and Mr. Eastwood told you that signing the agreement would be proof of your love for him, not his money, and that he wanted to protect you from his business creditors. These statements were, at best, misleading and manipulative. You were unsophisticated in financial matters and indicated several times that you did not fully understand the consequences of entering into the agreement. Also, Mr. Eastwood offered to pay for an independent lawyer but only if you "really felt that was necessary" — in other words, it was a reluctant offer.	
	On the other hand, a court may rely on the fact that you are well educated and could have insisted on seeing your own lawyer. The court may find that you had ample time before the wedding to seek independent legal advice rather than signing the agreement a few days after receiving it. Significantly, in the cases in which Franklin courts have found premarital agreements to be involuntary, the agreements were presented shortly (e.g., days or a few weeks) before the wedding.	
Conclusion	In sum, while the most likely conclusion is that a court would find that the premarital agreement was entered into voluntarily, it is conceivable that a court could be persuaded under these facts that the premarital agreement was not voluntarily entered into.	

II. Is the Premarital Agreement Unenforceable Because it Was Unconscionable When Entered Into?		**0 or 1**
Rule	Under Franklin statutory law, a premarital agreement is not enforceable if the person against whom enforcement is sought proves that the agreement was unconscionable when it was executed. FPAA §105(1)(b). The issue of unconscionability is a matter of law under FPAA §105(2), which means that it is for the judge to decide. *In re Federman* (Fr. Ct. App. 2011). Generally, a contract is unconscionable if there was a gross disparity in bargaining power between the parties. *See Federman, citing Rider v. Rider*, (Fr. Ct. App. 2000). The legislative history of FPAA §105(1)(b) explains that "unconscionability includes protection against one-sidedness that rises to the level of oppression. . . ." *See id.*	
Rule Explanation	In *Federman*, the husband received all of the benefits of the agreement and the wife bore all of the burdens, resulting in a grossly unjust outcome. So, the court found that given the circumstances of the agreement and the one-sided nature in favor of the dominant party – the husband – the agreement was unconscionable at the time of its execution as a matter of law and thus unenforceable.	
Application	Here, on its face, the agreement treats both parties equally, but the effect of the agreement at the time of execution appears to benefit Mr. Eastwood and disadvantage you. Mr. Eastwood is a sophisticated businessman, who had previously been divorced. He knew that the 50-50 presumption in the Franklin equitable distribution statute would apply if there were no premarital agreement. He knew that, without the premarital agreement, you would be entitled to a presumption of 50% of the value of property acquired during the marriage. Mr. Eastwood's actions of insisting on the agreement and then placing the title to the family home in his name alone could be considered questionable.	
	Nevertheless, the terms of the agreement clearly stated that this is how you and Mr. Eastwood wanted your finances to be treated. And you were both employed, self-supporting professionals when you signed the agreement. Therefore, while one could dislike the outcome, it is not clear that the facts render this agreement unconscionable, and it is more likely than not that a court would find it unenforceable on that ground. I note, also, that we would bear the burden of proving this issue.	
Conclusion	Therefore, although a closer call than the voluntariness issue, it is possible that a court would find that the premarital agreement is unconscionable and therefore unenforceable under §105(1)(b) and Franklin case law, namely the *Federman* case. The one-sidedness in *Federman*, however, was more extreme than in this case, so it is far from certain that a court would conclude that a gross disparity in bargaining power existed when you and Mr. Eastwood entered into their premarital agreement.	

III. Would Enforcing the Spousal Support Waiver Provision Result in a Substantial Hardship Because of a Material Change in Circumstances Arising After the Premarital Agreement Was Signed?		**0 or 1**
Rule and Rule Explanation	Under Franklin law, if a provision regarding spousal support would create a substantial hardship, a court may refuse to enforce this provision and may sever it from the agreement. Even if the court did not find the agreement to be involuntary or unconscionable, the court could nevertheless sever the spousal support waiver provision so that the rest of the agreement will be enforced. FPAA §105(3). In the case of *Hughes v. Hughes* (Fr. Ct. App. 2017), for example, the court found that the husband losing his job and benefits and becoming paralyzed in a car accident were sufficient changes in circumstances to justify refusing to enforce an otherwise enforceable spousal support waiver provision in a premarital agreement.	
Application	Here, there has been a material change in circumstances in your financial independence, in large part prompted by Mr. Eastwood's conduct. When you and Mr. Eastwood signed the premarital agreement in 2006, you had full-time employment as a professor at Franklin State University. After you married, you continued teaching. During that time, you used your income to contribute to household expenses, although Mr. Eastwood paid a greater share due to his greater income. Two years after the marriage, you gave birth to your first child, Max. You took three months of parental leave before returning to work. After Hazel's birth two years later, Mr. Eastwood urged you to stop working and stay home with the children. He told you that you would never need to worry about money because he had plenty to support the family. You took what you intended to be a one-year leave of absence but then never went back to work. You were very reluctant to give up your teaching position because the computer science field changes very quickly. Plus, you gave up opportunities for promotion at the university. But again, Mr. Eastwood told you not to worry — he would always take care of you and your children.	
	There has also been a material change in your health, impacting your ability to earn a living, since you signed the agreement. Recently, you were diagnosed with rheumatoid arthritis, an autoimmune disorder. This condition has affected your ability to walk, read, lift, and move without pain. This will contribute to difficulties in finding employment. Unless you receive spousal support, you face what can fairly be characterized as a "substantial hardship. This situation is similar to the case of *Hughes*, where the husband lost his job and became paralyzed in a car accident after the premarital agreement was signed, resulting in the court's refusal to enforce the spousal support waiver even though it might otherwise be enforceable.	
Conclusion	Therefore, it seems highly probable, though not certain, that the court will not enforce the spousal support waiver provision and will sever it from the remainder of the Eastwoods' premarital agreement.	

Conclusion		**0 or 1**
Conclusion	Based on the statutory and case law in Franklin, it is likely that a court will find that you voluntarily entered into the premarital agreement. Further, it is more likely than not, though less certain, that the court will not find that the entire agreement is unenforceable on the ground that it was unconscionable when entered into.	
	Even if the premarital agreement is found to be voluntary and not unconscionable, there is a strong argument that the spousal support waiver provision should not be enforced because it creates a substantial hardship based on material changes in your circumstances. You have been out of the work force for 10 years at Mr. Eastwood's urging and now you suffer from a serious chronic medical condition. It is likely, though not certain, that the court would refuse to enforce this specific provision and instead consider whether you are entitled to an award of spousal support as if this clause was not in the premarital agreement.	
	I hope that I have provided you with a clearer understanding of your legal position. I understand that this news is not entirely what you were hoping to hear, especially as it concerns the marital home. Please contact me this week at your earliest convenience so that I may answer any questions and we can discuss next steps.	

Organization and Structure	**0 or 1**
Response organized in CR(RE)AC format with separate headings and separate paragraphs.	
Response responds to the task laid out in the Task Memo appropriately, making case comparisons as appropriate.	
Response includes adequate spacing (white space), or paragraphs are indented or set off by extra space.	
Response has an introduction outlining the response's overall organization/discussion points.	
Response has an overall conclusion, which follows logically from the discussion(s) in the response.	
Response looks like a client letter and follows the instructions about organization as instructed in the Task Memo.	

[34] Points Total

[0 - 15] = Level 1 below passing

[16 - 24] = Level 2 near passing

[25 - 34] = Level 3 passing or above passing

0

West & Martin LLP
Attorneys at Law
300 McCormack Place
Franklin City, Franklin 33703

September 9, 2020

Louisa Eastwood
[ADDRESS]
RE: Validity and Enforceability of Premarital Agreement

Dear Ms. Eastwood,

Thank you for entrusting us with your legal business during this difficult time. We understand that you would like the firm to analyze the validity and enforceability of the premarital agreement that you and William Eastwood signed before your marriage. Mr. Eastwood has filed for divorce and has told you that he intends to enforce the terms of the premarital agreement, which gives you no rights in the marital home and precludes you from getting any spousal support. You have asked us to advise you on whether you have any right to the marital home or to receive spousal support.

As a preliminary matter, premarital agreements are effective upon marriage. Franklin Premarital Agreement Act (FPAA) §101(1). They must be in writing, must be signed by both parties, and are enforceable without consideration. FPAA §102. A wide range of topics can be covered in premarital agreements, including spousal support. FPAA §104(1)(d). Franklin specifically carves out child support and says that premarital agreements may not adversely affect it. FPAA §104(2).

Here, the agreement was in writing and signed by both you and Mr. Eastwood, so it was properly executed. The law permits it to affect spousal support but it cannot adversely affect child support. Thus, while the agreement is relevant to your spousal support, you do not have to be concerned about the effect of the premarital agreement on Mr. Eastwood's responsibility to pay child support.

There are two grounds upon which we could argue that the agreement is unenforceable: (1) that it was not entered into by you voluntarily, and (2) that the agreement was unconscionable when it was executed. Unfortunately, as I will more fully explain below, based on my research of the law and review of the facts, I do not believe that either of these arguments is likely to succeed. If these arguments don't succeed, there is a third argument that we could make: (3) we could argue that the court should refuse to enforce the provision regarding spousal support on the grounds that it would result in substantial hardship for you based on a material change in circumstances arising after the agreement was signed. I believe that it is more likely than not that this argument will succeed, as I will explain below.

I. Was the Premarital Agreement Entered Into Voluntarily?

A premarital agreement is not enforceable if the person against whom enforcement is sought proves that the person did not execute the agreement voluntarily. FPAA §105(1)(a). Courts in Franklin have focused on the conditions and circumstances at the time of the formation of the premarital agreement to determine voluntariness. Courts have considered five factors: (1) whether circumstances in signing the agreement, such as the shortness of time between execution and the marriage, indicate coercion or lack of knowledge, (2) whether there was any surprise or malfeasance in presentation of the agreement, (3) the presence or

absence of an opportunity to consult independent counsel, (4) whether there was full disclosure of assets and obligations, and (5) the parties' understanding of the rights being waived under the agreement. *Richards v. Richards*, (Fr. Ct. App. 2010).

In the *Richards* case, the court held that the premarital agreement was not voluntary because the circumstances created a sufficiently coercive environment — Mrs. Richards received the agreement just two weeks before the wedding, she was unable to review it with her attorney before signing, although she made that request, and she was pressured by her husband's statements that his lawyer could "take care of this" for both of them and that guests already had bought plane tickets to travel to their wedding. The evidence also showed that Mrs. Richards had limited knowledge of the defendant's finances.

In contrast, in the case of *Brandt v. Brandt* (Fr. Ct. App. 2006), the court found that the agreement was voluntary because the wife had the obligation and opportunity to protect her own interests where she was experienced in business, given the agreement seven months before the wedding, and told that its purpose was to protect her husband's assets for his children from a prior marriage as well as to protect her from his business debts, and she was repeatedly advised to seek independent counsel. The agreement was valid even though she never read it before the day she signed it.

Here, based on the past cases, the circumstances surrounding the signing of the premarital agreement most likely point to it being voluntarily entered into. First, there are not sufficient facts to indicate coercion because you were given the agreement three months before you married, unlike in *Richards* where the wife was given the agreement just two weeks before the wedding, or in *Kosik v. Kosik* (Fr. Ct. App. 1995) (cited in *Richards*), where the agreement was presented to the wife three days before her wedding, and she was advised not to get her own attorney.

Second, there was no surprise in the presentation of the agreement because Mr. Eastwood had discussed his desire to have a premarital agreement before he presented you with a draft; he did not object when you said that you needed time to review it carefully. Indeed, he suggested that you could either meet with his lawyer, who would explain the agreement, or that he would pay for you to hire your own lawyer.

Third, there was an opportunity for you to consult independent counsel because, in addition to Mr. Eastwood agreeing to pay for your lawyer, there is no evidence that he attempted to wait until the last moment to present you with the agreement. In fact, you signed it and had a copy in your possession for three months before you were married. This is distinguishable from *Richards* because there the husband made statements designed to prevent his future wife from taking the time to seek her own attorney and even told her that his attorney could take care of things for both of them.

Fourth, there was full disclosure of assets and obligations because you and Mr. Eastwood exchanged substantially complete asset and debt statements four months before the wedding; there is no indication that Mr. Eastwood was hiding assets. This is unlike *Richards*, where the wife had limited knowledge of her husband's finances.

Based on the fifth factor, there are certain facts that we could raise to support an argument that you did not fully understand the rights being waived. The agreement was drawn up by Mr. Eastwood's longtime lawyer, and Mr. Eastwood told you that signing the agreement would be proof of your love for him, not his money, and that he wanted to protect you from his business creditors. These statements were, at best, misleading and manipulative. You were unsophisticated in financial matters and indicated several times that you did not fully understand the consequences of entering into the agreement. Also, Mr. Eastwood offered to pay for an independent lawyer but only if you "really felt that was necessary" — in other words, it was a reluctant offer.

On the other hand, a court may rely on the fact that you are well educated and could have insisted on seeing your own lawyer. The court may find that you had ample time before the wedding to seek independent legal advice rather than signing the agreement a few days after receiving it. Significantly, in the cases in which Franklin courts have found premarital agreements to be involuntary, the agreements were presented shortly (e.g., days or a few weeks) before the wedding.

In sum, while the most likely conclusion is that a court would find that the premarital agreement was entered into voluntarily, it is conceivable that a court could be persuaded under these facts that the premarital agreement was not voluntarily entered into.

II. Is the Premarital Agreement Unenforceable Because it Was Unconscionable When Entered Into?

Under Franklin statutory law, a premarital agreement is not enforceable if the person against whom enforcement is sought proves that the agreement was unconscionable when it was executed. FPAA §105(1)(b). The issue of unconscionability is a matter of law under FPAA §105(2), which means that it is for the judge to decide. *In re Federman* (Fr. Ct. App. 2011). Generally, a contract is unconscionable if there was a gross disparity in bargaining power between the parties. *See Federman, citing Rider v. Rider*, (Fr. Ct. App. 2000). The legislative history of FPAA §105(1)(b) explains that "unconscionability includes protection against one-sidedness that rises to the level of oppression. . . ." *See id*.

In *Federman*, the husband received all of the benefits of the agreement and the wife bore all of the burdens, resulting in a grossly unjust outcome. So, the court found that given the circumstances of the agreement and the one-sided nature in favor of the dominant party – the husband – the agreement was unconscionable at the time of its execution as a matter of law and thus unenforceable.

Here, on its face, the agreement treats both parties equally, but the effect of the agreement at the time of execution appears to benefit Mr. Eastwood and disadvantage you. Mr. Eastwood is a sophisticated businessman, who had previously been divorced. He knew that the 50-50 presumption in the Franklin equitable distribution statute would apply if there were no premarital agreement. He knew that, without the premarital agreement, you would be entitled to a presumption of 50% of the value of property acquired during the marriage. Mr. Eastwood's actions of insisting on the agreement and then placing the title to the family home in his name alone could be considered questionable.

Nevertheless, the terms of the agreement clearly stated that this is how you and Mr. Eastwood wanted your finances to be treated. And you were both employed, self-supporting professionals when you signed the agreement. Therefore, while one could dislike the outcome, it is not clear that the facts render this agreement unconscionable, and it is more likely than not that a court would find it unenforceable on that ground. I note, also, that we would bear the burden of proving this issue.

Therefore, although a closer call than the voluntariness issue, it is possible that a court would find that the premarital agreement is unconscionable and therefore unenforceable under §105(1)(b) and Franklin case law, namely the *Federman* case. The one-sidedness in *Federman*, however, was more extreme than in this case, so it is far from certain that a court would conclude that a gross disparity in bargaining power existed when you and Mr. Eastwood entered into their premarital agreement.

III. Would Enforcing the Spousal Support Waiver Provision Result in a Substantial Hardship Because of a Material Change in Circumstances Arising After the Premarital Agreement Was Signed?

Under Franklin law, if a provision regarding spousal support would create a substantial hardship, a court may refuse to enforce this provision and may sever it from the agreement. Even if the court did not find the agreement to be involuntary or unconscionable, the court could nevertheless sever the spousal support waiver provision so that the rest of the agreement will be enforced. FPAA §105(3). In the case of *Hughes v. Hughes* (Fr. Ct. App. 2017), for example, the court found that the husband losing his job and benefits and becoming paralyzed in a car accident were sufficient changes in circumstances to justify refusing to enforce an otherwise enforceable spousal support waiver provision in a premarital agreement.

Here, there has been a material change in circumstances in your financial independence, in large part prompted by Mr. Eastwood's conduct. When you and Mr. Eastwood signed the premarital agreement in 2006, you had full-time employment as a professor at Franklin State University. After you married, you continued teaching. During that time, you used your income to contribute to household expenses, although Mr. Eastwood paid a greater share due to his greater income. Two years after the marriage, you gave birth to your first child, Max. You took three months of parental leave before returning to work. After Hazel's birth two years later, Mr. Eastwood urged you to stop working and stay home with the children. He told you that you would never need to worry about money because he had plenty to support the family. You took what you intended to be a one-year leave of absence but then never went back to work. You were very reluctant to give up your teaching position because the computer science field changes very quickly. Plus, you gave up opportunities for promotion at the university. But again, Mr. Eastwood told your not to worry — he would always take care of you and your children.

There has also been a material change in your health, impacting your ability to earn a living, since you signed the agreement. Recently, you were diagnosed with rheumatoid arthritis, an autoimmune disorder. This condition has affected your ability to walk, read, lift, and move without pain. This will contribute to difficulties in finding employment. Unless you receive spousal support, you face what can fairly be characterized as a "substantial hardship." This situation is similar to the case of *Hughes*, where the husband lost his job and became paralyzed in a car accident after the premarital agreement was signed, resulting in the court's refusal to enforce the spousal support waiver even though it might otherwise be enforceable.

Therefore, it seems highly probable, though not certain, that the court will not enforce the spousal support waiver provision and will sever it from the remainder of the Eastwoods' premarital agreement.

Conclusion

Based on the statutory and case law in Franklin, it is likely that a court will find that you voluntarily entered into the premarital agreement. Further, it is more likely than not, though less certain, that the court will not find that the entire agreement is unenforceable on the ground that it was unconscionable when entered into.

Even if the premarital agreement is found to be voluntary and not unconscionable, there is a strong argument that the spousal support waiver provision should not be enforced because it creates a substantial hardship based on material changes in your circumstances. You have been out of the work force for 10 years at Mr. Eastwood's urging and now you suffer from a serious chronic medical condition. It is likely, though not certain, that the court would refuse to enforce this specific provision and instead consider whether you are entitled to an award of spousal support as if this clause was not in the premarital agreement.

I hope that I have provided you with a clearer understanding of your legal position. I understand that this news is not entirely what you were hoping to hear, especially as it concerns the marital home. Please contact me this week at your earliest convenience so that I may answer any questions and we can discuss next steps.

Sincerely,

Applicant