

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2273**

In re the Marriage of:
Gary Sheldon Holmes, petitioner,
Respondent,

vs.

Mary Louise Holmes,
Appellant.

**Filed September 17, 2012
Affirmed
Muehlberg, Judge***

Hennepin County District Court
File No. 27-FA-08-3313

Alan C. Eidsness, Lisa T. Spencer, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent)

Eric J. Magnuson, Diane Bratvold, Leah Cee O. Boomsma, Briggs and Morgan, P.A., Minneapolis, Minnesota; and

Karim El-Ghazzawy, El-Ghazzawy Law Offices, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Cleary, Judge; and Muehlberg, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

MUEHLBERG, Judge

Appellant-wife challenges the district court's order, arguing that the antenuptial agreement (Agreement) lacked procedural and substantive fairness; that deferred taxes should not have been deducted from her buyout because the taxes were uncertain and speculative; and that the district court denied her a fair hearing by converting the limited-scope evidentiary hearing into a hearing on a final division of the parties' property. Because we conclude that the Agreement was procedurally and substantively fair, that the district court did not err in deducting deferred taxes, and that the district court provided a fair hearing, we affirm.

FACTS

After being in a relationship for six and a half years, appellant Mary Holmes and respondent Gary Holmes were married on July 4, 1990. Before the marriage, respondent asked appellant to sign an Agreement because he had vastly greater assets and wealth than she did. She acquiesced. After 18 years of marriage, the parties decided to divorce. The district court bifurcated the proceedings. In the first part of the proceedings, the parties resolved all of the issues regarding custody and parenting time of their three children. The second part of the proceedings, which are the focus in this appeal, addressed the validity of the Agreement.

The district court concluded that the Agreement comported with procedural fairness, substantive fairness at execution, and substantive fairness at enforcement. The district court also divided the parties' assets and assessed a substantial amount in deferred

taxes against appellant for taxes that respondent would incur from the sale of assets held by appellant. Appellant moved for amended findings or a new trial, and the district court appointed a special master for the motions. The special master recommended amending two findings from the district court order and denying the motions to amend the judgment and decree and for a new trial. After a second hearing, the district court amended the original order to incorporate the special master's proposed amended findings. This appeal follows.

DECISION

I.

Appellant contends that the district court erred in "finding" the parties' Agreement to be procedurally and substantively fair. This court will not set aside the district court's findings of fact unless they are clearly erroneous. *In re Estate of Aspenson*, 470 N.W.2d 692, 694 (Minn. App. 1991). But whether an antenuptial agreement is valid is a question of law, which we review de novo. *Siewert v. Siewert*, 691 N.W.2d 504, 506 (Minn. App. 2005), *review denied* (Minn. May 17, 2005).

Appellant argues that review of this case is "colored by the fact that the district court adopted [respondent]'s proposed findings of fact and conclusions of law virtually verbatim." While the district court used large parts of respondent's proposed language almost verbatim, it did make some changes. Even though the appellate courts disfavor the verbatim adoption of a party's proposed findings and conclusions, we do not automatically reverse the decision or change the standard of review. *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005) ("Adoption of a party's proposed

findings by a district court is generally an accepted practice.”), *review denied* (Minn. Sept. 28, 2005); *Sigurdson v. Isanti Cnty.*, 408 N.W.2d 654, 657 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987). But verbatim adoption raises two concerns: (1) whether the district court independently evaluated the evidence; and (2) whether there are specific and sufficient details to allow for meaningful appellate review. *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993); *see also Schallinger*, 699 N.W.2d at 23. Here, neither concern is present. First, the district court stated, “[t]he Court carefully considered the record evidence, assessed the credibility of the parties and witnesses, and analyzed the governing statutes and case law.” This was not in respondent’s proposed findings of fact and conclusions of law. Furthermore, the special master proposed amending the district court’s order, which the district court accepted in the amended findings of fact and conclusions of law. This shows that the district court carefully examined the issues in this complex case. Second, the supplemental findings of fact and conclusions of law are 75 pages long and are very detailed, which provides specific and sufficient detail to allow for meaningful appellate review. Therefore, the district court’s largely verbatim adoption of respondent’s proposed findings of fact and conclusions of law does not alter the standard of review.

For antenuptial agreements, Minn. Stat. § 519.11, subd. 1 (2010) provides:

A man and woman of legal age may enter into an antenuptial contract or settlement prior to solemnization of marriage which shall be valid and enforceable if (a) there is a full and fair disclosure of the earnings and property of each party, and (b) the parties have had an opportunity to consult with legal counsel of their own choice.

The party contesting the antenuptial agreement has the burden of proof. *Id.* at subd. 5.

The supreme court has held that the statute has not altered the common law rules of procedural or substantive fairness. *McKee-Johnson v. Johnson*, 444 N.W.2d 259, 265 (Minn. 1989) (*overruled on other grounds In re Estate of Kinney*, 733 N.W.2d 118 (Minn. 2007)). As noted by *Kinney*, under the current state of the law, if a spouse challenging an antenuptial agreement did not have the opportunity to consult with independent counsel about the agreement before signing it, the antenuptial agreement is not automatically rendered unenforceable under the common law, but the lack of an opportunity to consult with counsel is a factor in addressing whether the agreement is fair); *see also Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998), *review denied* (Minn. May 28, 1998). Rather, the statute codified the procedural fairness requirements. *Pollock-Halvarson*, 576 N.W.2d at 455; *see also McKee-Johnson*, 444 N.W.2d at 265 (“The procedural review focuses on determining whether at the inception the agreement was fairly procured, and, under the common law, relevant factors to be considered are substantially identical to those which the legislature codified in Minn. Stat. § 519.11, subd. 1 (1988).”).

A. Procedural fairness

Appellant contends that respondent did not provide a fair disclosure. During oral argument before this court, appellant clarified that she is not arguing that respondent did not provide sufficient documentation. Rather, she argues that the disclosure was so voluminous that she did not have enough time to go through it all, which made it procedurally unfair. Appellant’s argument is unpersuasive. In his disclosure, respondent

provided a one-page summary of all of his assets and liabilities. He broke it down into “contracts and mortgages receivable,” “listed securities,” “unlisted securities,” “total value in partnerships,” “real estate owned,” “cash value of life insurance,” and “IRA and profit sharing plan.” Respondent then listed his liabilities, of which he had none. At the bottom of the page, he clearly listed his total net worth, which was a very substantial amount. This one-page summary of his personal finances that respondent provided belies any claim that appellant could not determine respondent’s wealth. As supporting documentation, respondent also provided 260 pages of his financial holdings in detail, which this court views with favor. *See McKee-Johnson*, 444 N.W.2d at 266. Appellant’s counsel also had time to ask for two changes to the antenuptial agreement. Respondent accepted both proposed changes. Because respondent provided full disclosure of his financial holdings and presented the material in a way that would allow appellant to easily ascertain his financial situation before the marriage, it was procedurally fair.

But even if what respondent supplied was not sufficient, appellant’s general knowledge of respondent’s wealth can be sufficient to satisfy the requirement for financial disclosure. This court has held that a wife’s general knowledge of a husband’s financial condition coupled with her willingness to sign the agreement “whether he had two million dollars or two hundred dollars” was sufficient to satisfy the disclosure requirement. *Hill v. Hill*, 356 N.W.2d 49, 52 (Minn. App. 1984), *review denied* (Minn. Feb. 19, 1985). This court has also held that a woman living with a man for six years before the marriage who was familiar with the home and the possessions within it, coupled with the woman’s statement that she trusted him and would sign anything he

wanted, was sufficient to satisfy the disclosure requirement. *Pollock-Halverson*, 576 N.W.2d at 456.

Here, appellant and respondent were in a relationship for six and a half years before they were married. The district court made specific findings that, while they were dating, appellant knew that respondent owned a significant amount of real estate—including two homes in Minnesota (one of which appellant occupied), a house in Colorado, and two condominiums in Colorado. Appellant was also aware that respondent owned warehouses, shopping centers, apartment buildings and townhomes, numerous luxury vehicles, boats, jet skis, motorcycles, snowmobiles, and had access to a corporate jet. Adding to appellant’s general knowledge of respondent’s wealth is the fact that respondent discussed his financial situation with appellant on as many as 30 occasions before the marriage, and he testified that he told her that he would not get married without a antenuptial agreement because he had worked hard for his assets. While appellant testified that respondent never discussed his financial situation with her prior to receiving the draft of the antenuptial agreement, she also testified that she was going to sign the agreement no matter what it said because she wanted to marry respondent. Because appellant had a general knowledge of respondent’s wealth before signing the antenuptial agreement and she was going to sign it no matter what it said, respondent satisfied the financial disclosure requirement necessary for procedural fairness.

B. Substantive fairness

Appellant contends that the Agreement was substantively unfair at the time of execution and at the time of enforcement. “Substantive fairness guards against

misrepresentation, overreaching[,] and unconscionability.” *Pollock-Halvarson*, 576 N.W.2d at 455. Such an assessment requires the district court to examine the “amorphous concepts” of “fairness, reasonableness, or conscionability.” *McKee-Johnson*, 444 N.W.2d at 265. But the supreme court has cautioned that when the district court conducts its substantive fairness analysis, the

premarital agreement need not approximate a division suggested by property division statutes in either the probate court code or in the marital law in order to meet the requirement of substantive fairness. Indeed, one of the goals, if not the primary purpose, of an antenuptial agreement is to alter state-prescribed property rights which would otherwise arise on dissolution of marriage.

Id. at 268, n.8.

Appellant cites to *In re Estate of Kinney* for the factors that a district court should use to determine whether the antenuptial agreement was “equitably and fairly made” *under common law* when there is a confidential relationship between the parties¹: (1) whether the parties disclosed their assets fairly and fully; (2) whether the agreement was supported by adequate consideration; (3) whether the parties knew how the agreement impacted their rights; and (4) whether there was abuse of fiduciary relations, undue influence, or duress. 733 N.W.2d at 124. These factors overlap with the procedural fairness factors that were codified by Minn. Stat. § 511.19—specifically the

¹ “A confidential or fiduciary relationship between the parties to an antenuptial agreement is usually presumed.” *Kinney*, 733 N.W.2d at 124 n.7; *see also Rudbeck v. Rudbeck*, 365 N.W.2d 330, 332 (Minn. App. 1985). But there was no confidential relationship when the parties, strangers to one another, talked of marriage at their first meeting, and it was clear that the man only wanted a housekeeper, as there was no courtship or engagement. *In re Estate of Malchow*, 143 Minn. 53, 172 N.W. 915 (1919). Here, the parties do not dispute that appellant and respondent were in a confidential relationship.

first factor (fair financial disclosure) and the third factor (adequate representation so the parties know their rights). When there is inadequate consideration to support an agreement between parties in a confidential relationship, there is a presumption of fraud. *Estate of Serbus v. Serbus*, 324 N.W.2d 381, 384 (Minn. 1982) (*overruled on other grounds, Kinney*, only for the proposition that if a spouse challenging an antenuptial agreement does not have the opportunity to consult with independent counsel about the agreement, the antenuptial agreement is not rendered unenforceable under the common law, but it is a factor).

1. Substantive unfairness at time of execution

Appellant contends that the Agreement was substantively unfair at the time of execution because there was inadequate consideration. First, appellant claims the district court erred by not comparing the benefits under the terms of the Agreement with the benefits she would have received had there been no agreement. She cites to two cases for support: *Slingerland v. Slingerland*, 115 Minn. 270, 132 N.W. 326 (1911) and *Rudbeck v. Rudbeck*, 365 N.W.2d 330 (Minn. App. 1985). Both of these cases are distinguishable.

In *Slingerland*, the defendant was a 67-year-old widower who ran a successful business. *Slingerland*, 115 Minn. at 272, 132 N.W. at 327. The plaintiff was 23 years old, possessed little property, and was pregnant with defendant's baby. *Id.* At the urging of plaintiff, the defendant agreed to marry her. *Id.* He had his attorney draw up papers, and without fully disclosing his assets to her, she having no person of business judgment or experience explain the agreement to her, and under the strain of being pregnant and wanting to get married, she signed it. *Id.* at 273, 132 N.W. at 327. Under the agreement,

she would not receive any of his estate upon his death, and in return she would be paid \$5,000. *Id.* at 272, 132 N.W. at 327. They had six children together, four of whom were living at the time of the dispute. *Id.* at 273, 132 N.W. at 327. The supreme court ruled the monetary consideration to be “pitifully inadequate,” as she would likely outlive him by many years, which could leave her “practically penniless at his death, and without the means to support the children.” *Id.* at 274, 132 N.W. at 328.

In *Rudbeck*, this court focused on the factors that the wife did not receive a full disclosure of husband’s assets and that she did not have the time or ability to consult with an attorney prior to signing the agreement. 365 N.W.2d at 332-33. There was no analysis on the adequacy of the consideration.

Here, the age difference between appellant and respondent is six years. At the time of the antenuptial agreement, appellant was 36 years old and had a modest gross annual income and net worth. Respondent was 42 years old and had a very substantial gross annual income and net worth. When the Agreement was enforced after their divorce, appellant received a very substantial sum of money that increased her net worth to more than 300 times what it was before they were married. Respondent also pays appellant child support for the three children they have together and pays all of the children’s medical and dental insurance, uninsured medical and dental expenses, activity expenses, and private school tuition. The small difference in ages of the parties and the very significant payments made to appellant distinguish this case from *Slingerland*. Because there is no concern that appellant will be unable to support herself or their children, the Agreement was supported by adequate consideration.

Second, appellant contends that *Slingerland* and *Rudbeck* stand for the proposition that the district court can compare the benefits received under the agreement with the benefits that would have been received without an agreement to determine whether respondent overreached. But both *Slingerland* and *Rudbeck* focus on full disclosure and adequate representation as the most significant factors, which are both met. Moreover, the supreme court in its more recent *McKee-Johnson* case noted that the purpose of antenuptial agreements is to change what one of the parties is entitled to receive under the dissolution statutes upon dissolution of a marriage. 444 N.W.2d at 268, n.8. The observation in *McKee-Johnson* is opposite of what appellant asserts the rule to be from *Slingerland* and *Rudbeck*.

But even if there was inadequate consideration leading to a presumption of fraud, the presumption of fraud can be overcome by a showing that appellant knew the extent, character, and value of the property and the nature and extent of her rights under the agreement. *Serbus*, 324 N.W.2d at 385. The factors necessary to overcome the presumption of fraud are the procedural fairness factors of fair disclosure and adequate representation. Because respondent fairly disclosed his assets and appellant was represented by counsel, respondent has overcome any presumption of fraud.

2. Substantive unfairness at time of enforcement

Appellant contends that the Agreement lacked substantive fairness at the time of enforcement because respondent's substantial pre-marital wealth increased more than ten times during the marriage, while appellant was awarded less than three percent of respondent's net worth in the division of property. The supreme court has held that if the

premises upon which the terms of the antenuptial agreement were originally based “have so drastically changed that enforcement would not comport with the reasonable expectations of the parties at the inception to such an extent that to validate them at the time of enforcement would be unconscionable,” then the district court can find the agreement to be substantively unfair when the agreement is enforced. *McKee-Johnson*, 444 N.W.2d at 267. The supreme court provided that the inquiry is fact specific, but that it should be based on the reasonable expectations of the parties. *Id.*

The district court noted that at the time of enforcement, respondent’s estate had increased approximately ten-fold and that appellant’s net worth after enforcement of the antenuptial agreement increased more than 300-fold. The district court also noted that appellant “can withdraw a [substantial amount of] annual investment income from the liquid assets she will own while still keeping up with inflation, which is nearly 20 times greater than the annual gross income she earned prior to the marriage.” The district court concluded, “Given these circumstances, the disparate property award and limited waiver of spousal maintenance provided for in the Agreement were clearly a reasonable expectation and do not render the Agreement substantively unfair.” Because respondent’s continued success in business was not an unreasonable expectation within the marriage, there was no substantive unfairness at the time of enforcement.

II.

Appellant contends that the district court erred in deducting deferred taxes from appellant’s cash buyout because the taxes were uncertain and speculative. The specific value of an asset in a dissolution proceeding is a finding of fact, which will not be set

aside unless clearly erroneous. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). The district court has broad discretion in valuing an asset because the process necessarily involves an approximation. *Id.*

In *Maurer*, the supreme court rejected a bright-line rule that future tax consequences can only be considered when “a sale of the property is either required or certain to occur within a short time of the dissolution” because “[s]uch a bright-line rule would leave little, if any, room for the exercise of discretion.” *Id.* at 607. The supreme court reasoned that its previous cases *Aaron v. Aaron*, 281 N.W.2d 150 (Minn. 1979), *O’Brien v. O’Brien*, 343 N.W.2d 850 (Minn. 1984), and *Miller v. Miller*, 352 N.W.2d 738, 744 (Minn. 1984) “demonstrate that our concern in *Aaron* was speculation in the form of reliance on generally insufficient evidence rather than with determining whether a bright-line rule had been met.” *Id.* Ultimately, *Maurer* concluded that “it would be inequitable to preclude a [district] court from considering future tax consequences when the [district] court has a reasonable and supportable basis for making an informed judgment as to the probable liability.” *Id.* at 608 (quotations omitted).

The district court found that a substantial amount of appellant’s very substantial property award under the antenuptial agreement should be subtracted from that total based on deferred taxes that respondent will incur as a result of the property distribution. The district court explained its calculations and that it was relying on the testimony given by Eugene Bowar, director of tax at respondent’s business, which it found to provide a reasonable and supportable basis for the district court to make an informed judgment as

to the ultimate tax liability that respondent will encounter because of the cash buyout of the property distribution occurring in the dissolution.

In his testimony, Bowar presented his conclusions using a single-paged summary, listing the deferred taxes on several of the assets respondent would have to sell in order to satisfy his obligations under the parties' Agreement. Bowar explained that this total was calculated assuming that the assets would be sold. Because, in this case, it is a question of how much the tax liability will be and not a question of whether there will be tax liability and because Bowar's estimates of those tax amounts are supported by the record, the district court did not err in using Bowar's analysis.

Appellant still alleges that respondent's tax liability is not certain, as tax liability can be avoided through like-kind exchanges, and respondent is able to work the system to avoid paying income taxes. There is nothing in the record to support appellant's assertions. Even if appellant's assertions are true, however, they do not relieve respondent from deferred tax liability. Bowar explained that deferred taxes can be avoided using like-kind exchanges with replacement property, but "[a]s you reduce the basis of a new property acquired, . . . you reduce your ordinary depreciation deduction. So effectively, you pay the tax over time when you do a like-kind exchange." Furthermore, for the years in which respondent did not pay income taxes, Bowar testified that in the years of 2004 and 2006 there was a net operating loss from the prior year, and in 2008 there was a taxable loss as a result of the Madoff Ponzi scheme. But none of this affects the tax liability that respondent has in connection with the division of property required by the parties' Agreement. Because respondent will still have tax liability as

Bowar presented during his testimony, the district court did not err in subtracting an amount of those taxes from appellant's buyout total.

III.

Appellant contends that the district court denied her a fair hearing when it converted the limited-scope evidentiary hearing into a hearing addressing the final division of the parties' property. The district court has great discretion in determining the procedural calendar of a case. *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982). But a continuance or permission to engage in further discovery should be liberally granted, especially when there is a claim of insufficient time to conduct discovery. *Id.*

In its order from July 2009, the district court allowed the parties to engage in limited formal discovery regarding the value of gifts and transfers of property. The district court also explained that, to preserve the possibility of timely final adjudication, evidentiary hearing dates were reserved in the event the district court concluded that sufficient information was produced to address the enforceability of the parties' antenuptial agreement. The district court also discussed the discovery process regarding the valuation of the property with appellant during trial:

APPELLANT'S COUNSEL: We have no ability to determine ultimate value that way.

THE COURT: You have the ability to depose people. You have the ability to cross-examine people.

APPELLANT'S COUNSEL: I think as part of the second stage proceeding that would be correct, and I assume the Court would expand its—its discovery at that stage to allow us to address that.

THE COURT: Don't make any such assumption. These people have had two years to do discovery in this case.

During discovery there were detailed findings of appellant's net worth that covered her amounts receivable, other personal assets, passive investments, real estate holdings, other assets, her deferred tax assets, present value of antenuptial payments, and her liabilities. The district court also made detailed findings regarding assets that respondent gave to appellant as gifts. Because the district court had all of the evidence that was needed to make a final decision on the division of property, and because the parties had more than two years to conduct discovery, the district court did not abuse its discretion in enforcing the antenuptial agreement's division of property.

Affirmed.