**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-174**

In re the Marriage of:
Richard T. Igo,
petitioner,
Appellant,

vs.

Jennifer Igo,
Respondent.

**Filed June 8, 2010**
**Affirmed in part and reversed in part**
**Klaphake, Judge**

Ramsey County District Court
File No. 62-F3-07-000419

Ben M. Henschel, Moss & Barnett, P.A., Minneapolis, Minnesota (for appellant)

Debra E. Yerigan, Messerli & Kramer, Minneapolis, Minnesota; and

Kay N. Hunt, Lommen Abdo Cole King Stageberg, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, 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.

## U N P U B L I S H E D  O P I N I O N

**KLAPHAKE**, Judge

In dissolving the parties' four-year marriage, the district court ruled that the parties' entire premarital agreement (PMA) was unenforceable and awarded respondent Jennifer Igo $60,000 in costs and attorney fees, despite inclusion in the parties' PMA of a severability clause and a provision requiring the parties to pay their own costs and attorney fees in the event of a marital dissolution. On appeal, appellant Richard Igo argues that the district court (1) erred by failing to consider the effectiveness of the severability clause when it determined that the entire PMA was unenforceable; (2) abused its discretion by awarding respondent attorney fees without identifying the extent to which the award was need-based or conduct-based; and (3) abused its discretion by imposing a continuing monetary sanction against appellant for his failure to turn over eleven vehicles to respondent as required by the original decree.

We affirm in part because the district court properly rejected the entire PMA as substantively unfair at the time of its enforcement, thereby rendering (1) the effectiveness of the severability clause irrelevant, and (2) the award of costs and attorney fees to respondent a valid exercise of its discretion, factually supported either by respondent's need or by appellant's conduct. But we reverse the district court's award of monetary sanctions because the district court did not have a proper legal basis to make the award.

## D E C I S I O N

*1. Effectiveness of PMA*

Under Minnesota law, a premarital agreement is treated as a contract. *See* Minn. Stat. § 519.11, subd. 6 (2008) (stating that the statute "shall apply to all antenuptial contracts and settlements executed on or after August 1, 1979"); *McKee-Johnson v. Johnson*, 444 N.W.2d 259, 268 n. 8 (Minn. 1989) (stating that "[i]f the parties to a premarital agreement are limited to state provided property divisions, they would be deprived of their right to contract or to divide their property as they wish").

An antenuptial or premarital agreement entered into before marriage is 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." Minn. Stat. § 519.11, subd. 1 (2008). If an agreement complies with these procedural requirements, a party challenging the validity of the contract has the burden of proof to demonstrate its invalidity. Minn. Stat. § 519.11, subd. 5 (2008); *Siewert v. Siewert*, 691 N.W.2d 504, 506 (Minn. App. 2005), *review denied* (Minn. May 17, 2005); *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. App. 1998), *review denied* (Minn. May 28, 1998). "Whether an antenuptial agreement is valid is a question of law subject to de novo review." *Siewert*, 691 N.W.2d at 506. Further, on established facts, "[w]hether a contract provision is unconscionable is a question of law for the court." *Osgood v. Medical, Inc.*, 415 N.W.2d 896, 901 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988).

The district court found the PMA to be valid both procedurally and substantively at the time of its inception. In accordance with Minnesota law, the court also considered the substantive fairness of the PMA at the time of its enforcement. *See McKee-Johnson*, 444 N.W.2d at 267; *In re Estate of Aspenson*, 470 N.W.2d 692, 696 (Minn. App. 1991). A court may scrutinize a premarital agreement for unconscionability at the time of enforcement "if the premises upon which [the agreement was] originally based have so drastically changed that enforcement would not comport with the reasonable expectations of the parties at the [contract's] inception." *McKee-Johnson*, 444 N.W.2d at 267; *see Pollack-Halvarson*, 576 N.W.2d at 455 ("Substantive fairness guards against misrepresentation, overreaching and unconscionability."). In so doing, the district court must "strike a balance between the law's policy favoring freedom of contract between informed consenting adults, and substantive fairness . . ." *McKee-Johnson*, 444 N.W.2d at 267-68.

Here, the district court found that appellant's inappropriate conduct during the dissolution proceedings caused respondent to incur attorney fees, and appellant does not challenge the court's findings supporting its invalidation of the PMA provision requiring respondent to pay her own attorney fees. Rather, he claims that the district court failed to consider the effect of a severability clause contained in the PMA that allows the remainder of the PMA to remain in effect upon invalidation of a portion of the PMA.

In rejecting the PMA as a valid contract, the court stated that "[t]he Prenuptial Agreement executed by the parties on March 19, 2004, is invalid and not enforceable." This order was based on a conclusion of law that states that the PMA was "substantively

unfair at the time of its [enforcement]." The district court also made the following finding on the validity of the PMA:

> [R]espondent could never have foreseen the abuse of process perpetrated by [appellant] in this dissolution; no reasonable person could have so foreseen. It would be substantively unfair in the enforcement of the Prenuptial Agreement and unconscionable to validate [a provision making each party responsible for their own attorney fees], thus precluding an award of attorney fees and costs to [respondent] in this matter.

While this part of the court's decision could have been more precisely drafted, we conclude that the court's intention was clear: the court's broad references to the substantive unfairness of the PMA at the time of enforcement encompass the PMA as a whole, and not just the provision on attorney fees. This construction is consistent with the language of the conclusion of law and the court's eventual order finding the entire PMA "invalid and not enforceable." Because the court invalidated the whole PMA and because we are affirming that decision, analyzing the effect of the severability clause is unnecessary. Further, we also note that the court's finding on appellant's inappropriate conduct is fully supported in the record, which shows evidence of appellant's egregious conduct in thwarting the dissolution proceedings and in dealing deceptively with the court and respondent. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (permitting adverse inferences where party to dissolution "stonewall[ed] any meaningful investigation of her actual financial status"), *review denied* (Minn. Sept. 9, 2003).

The district court made the following relevant findings: (1) appellant failed to disclose in discovery property acquired during the marriage or to provide information on its value or encumbrances; (2) respondent's attorney had to find independent sources to identify numerous items of property acquired by appellant during the marriage; (3) the district court made adverse inferences about the existence of assets and their value because evidence about these assets was in appellant's control but he chose not to disclose it; (4) appellant gave an incredible account that documents subject to discovery were burglarized twice from him, once from a home and once from a locked trailer; such documents were in appellant's constructive possession; (5) appellant employed trial tactics to avoid going first as the dissolution petitioner, began "discovering" his previously undiscovered documents during trial, and "made blatant attempts to obfuscate through extended soliloquy" such that "[it] is no exaggeration that [appellant's] protraction of these proceedings is unprecedented in this court"; (6) appellant admitted to selling property during the course of proceedings without leave of court or the agreement of respondent; because of appellant's conduct, the court found it appropriate to enter judgment against him personally as well against his businesses; and (7) the court found that appellant's net worth increased from $5,241,672 to $7,340,971 during the marriage.

We observe no error in the court's decision to find the entire PMA unenforceable on the basis that it was substantively unfair at the time of enforcement.

*2. Basis for Attorney Fees Award*

Appellant next challenges the rationale for the district court's award of attorney fees. The district court made lengthy and detailed findings regarding appellant's

inappropriate conduct, appellant's ability to pay, and respondent's need for attorney fees. The district court ultimately concluded that attorney fees were "justified based both on [r]espondent's need and on [appellant's] conduct." Appellant claims that the district court did not clearly differentiate whether the fees awarded were need-based or conduct-based, and on how it computed those fees.

Attorney fees "shall" be awarded for a good-faith assertion of rights in a dissolution proceeding if one party needs them and the other party is able to pay them, and "may" be awarded if the party's conduct merits the award because the party has "unreasonably contribute[d] to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2008). Here, the district court made findings on the three factors required by the statute for an award of need-based fees and made lengthy findings on how appellant's conduct increased the cost of the proceedings and supported its award of conduct-based fees. A district court may award both need-based and conduct-based attorney fees, and the district court's decision is "reversed only for an abuse of discretion." *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

In *Haefele*, however, this court reversed an award of attorney fees because the district court failed to identify which fees were awarded for need or conduct. *Id.* There, the evidence was insufficient to award part of the conduct-based fees, and proper review was precluded by the district court's failure to differentiate between the types of fees awarded; also, the court remanded for other reasons, which it noted in deciding to remand the attorney fees issue. *Id.* Here, the record and findings show that the full amount of

attorney fees and costs could have been awarded based on either appellant's conduct or respondent's need. The record and findings support the amount of fees awarded. For these reasons, any error by the district court in failing to apportion its fee award between need-based fees and conduct-based fees is harmless. See Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

*3. Sanctions*

Appellant contends that the district court abused its discretion by granting respondent's posttrial motion for sanctions of $125 per day for appellant's failure to turn over to respondent 11 vehicles that constituted marital property. Respondent's motion seeking this sanction cites no supporting legal authority. In response to the motion, the district court found that the original decree had required appellant to give to respondent possession of 11 vehicles, motorcycles, and boats for immediate sale, and that appellant did not comply with the court's directive. In its dissolution decree, the court also found that appellant sold certain items of property during trial, and the court expressed "concern" that appellant "will continue to act as he sees fit despite what the Court might order him to do." The posttrial order states that appellant "shall be assessed a penalty of $125.00 per day [f]or each day he fails to surrender to respondent vehicles and boats as required by . . . the Judgment and Decree entered August 27, 2008."

A district court's decision to impose sanctions is discretionary. *See Kellar v. Von Holtum*, 605 N.W.2d 696, 702 (Minn. 2000) (stating that district court has full discretion to award the type of sanctions it deems necessary). In dissolution proceedings, the district court has the authority to grant equitable relief to enforce its own directives.

*DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 757-58 (Minn. 1981); *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985). In *Hanson*, this court said,

> [w]here enforcement of a property settlement provision is sought in situations where the court in the original decree has directed that one of the parties perform specific acts, it is felt that the court necessarily reserves some latitude to construe the basic intent and purpose of the decreed directive, and may enter an appropriate supplemental order accordingly, despite the fact that the precise language of the original decree may not have spelled out exactly what was later found necessary to be done to achieve those broad purposes.

379 N.W.2d at 233 (permitting district court in post-decree proceeding to alter a party's interest from goods to cash to implement the original decree). District courts are "vested with considerable inherent judicial authority necessary to their vital function" to dispose of cases in a just manner. *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995) (quotations and citations omitted).

While the sanctions here were not awarded in a contempt proceeding, we note that this court has professed some discomfort in imposing non-contempt monetary sanctions, other than in situations involving claims for attorney fees, without the "due process safeguards similar to those required in contempt proceedings." *Kronick v. Kronick*, 482 N.W.2d 533, 535 (Minn. App. 1992). In *Kronick*, the supreme court declined to make a "final decision whether the trial court had the inherent power to impose a private fine payable against one party to another party." *Id.* Here, the district court's sanction award was unsupported by any identified legal basis, and the type of sanctions granted would have been better suited to a contempt proceeding where appellant's due process rights would have been protected. *See Hopp v. Hopp*, 279 Minn. 170, 174-75, 156 N.W.2d 212,

216-17 (1968) (setting forth procedural protections of contempt proceedings); Minn. Stat. § 588.10 (2008) (permitting district court to impose fine not exceeding $250 per day for person adjudged guilty of contempt). Further, to the extent that the sanction required appellant to pay an amount to respondent that was additional to any amount he was ordered to pay under the judgment and decree, it altered the judgment and decree to some degree. In *Hanson*, this court merely ordered an award of goods to be converted to a cash payment as a sanction, which was consistent with the terms of the original decree. 379 N.W.2d at 233. Likewise here, the district court could reduce the value of the vehicles to a monetary value and award a portion of that amount to respondent. For all of these reasons, we reverse the district court's imposition of the sanction of $125 per day for appellant's failure to turn over the 11 vehicles to respondent.

**Affirmed in part and reversed in part.**