

SUPREME COURT OF WASHINGTON

In re the Marriage of Bernard

165 Wash. 2d 895 (2009) · Decided April 9, 2009

SUMMARY

The Washington Supreme Court held that the parties’ prenuptial agreement, as amended, was substantively and procedurally unfair and therefore unenforceable. The court affirmed the lower courts’ invalidation of the agreement and upheld the award of attorney fees and costs to Gloria Bernard.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Washington                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Stephens, J.; Alexander, C.J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Madsen, J.; Owens, J.; Sanders, J.                                                                                                                                                                                                            |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                                             |
| DECIDED               | April 9, 2009                                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Thomas Bernard sought review of a Court of Appeals decision affirming the trial court's invalidation of the parties' prenuptial agreement, as amended, and affirming awards of attorney fees and costs.                                                                                                                |
| STANDARD OF REVIEW    | The court reviewed the mixed policy-and-fact issue of procedural fairness de novo in light of the trial court's factual determinations. The trial court's factual findings were upheld if supported by substantial evidence, meaning evidence sufficient to persuade a fair-minded person of the truth of the premise. |
| PRECEDENTIAL VALUE    | Published Washington Supreme Court opinion and binding state precedent.                                                                                                                                                                                                                                                |
| PARTIES               | Thomas Bernard v. Gloria Bernard                                                                                                                                                                                                                                                                                       |

TOPICS

- prenuptial agreements
- marriage
- dissolution of marriage
- family law
- contracts

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the prenuptial agreement, as amended, was substantively unfair.
2. Whether the prenuptial agreement, as amended, was procedurally unfair because it was not entered into voluntarily and intelligently after adequate independent advice and full knowledge of legal consequences.
3. Whether the later side letter and amendment cured the original agreement's substantive or procedural defects.
4. Whether the trial court's awards of attorney fees and costs, including advance fees on appeal, should be affirmed.

## HOLDINGS

1. Washington applies a two-prong analysis to determine the enforceability of a prenuptial agreement: the court first considers substantive fairness, and if the agreement is substantively unfair, it considers procedural fairness.
2. The prenuptial agreement, as amended, was substantively unfair because it made provisions for Gloria Bernard disproportionate to the parties' respective means, restricted her ability to accumulate separate property, and precluded claims to Thomas Bernard's property.
3. The prenuptial agreement, as amended, was procedurally unfair because Gloria did not enter it voluntarily and intelligently after adequate independent advice and full knowledge of its legal consequences.
4. The awards of attorney fees and costs to Gloria Bernard at trial and on appeal were affirmed.

## KEY QUOTATIONS

*"If, however, the agreement is substantively unfair to the spouse not seeking enforcement, the court proceeds to the second prong."* (165 Wash. 2d at 903)

*"We adhere to the settled rule that "[t]he validity of prenuptial agreements in this state is based on the circumstances surrounding the execution of the agreement.""* (165 Wash. 2d at 904)

*"We hold the agreement, as amended, was procedurally unfair."* (165 Wash. 2d at 907)

*"Because the prenuptial agreement was both substantively and procedurally unfair, it is unenforceable."* (165 Wash. 2d at 907)

## FACTUAL BACKGROUND

Thomas Bernard, a wealthy real estate developer, required Gloria Bernard, his substantially less wealthy employee and fiancée, to sign a prenuptial agreement as a condition of marriage. Gloria received a draft only 18 days before the wedding, and her attorney received a materially different working draft three days before the wedding, leaving insufficient time for meaningful review or negotiation. Thomas testified that he would have

called off the wedding if Gloria did not sign, and Gloria signed the agreement the day before the wedding subject to a side letter and later amendment. The amended agreement restricted Gloria's property, inheritance, and maintenance rights and was found to be disproportionate and procedurally unfair.

## PROCEDURAL HISTORY

Gloria Bernard filed for dissolution and challenged the enforceability of the parties' prenuptial agreement. The trial court ruled the agreement substantively unfair as a matter of law, then found it procedurally unfair after a four-day trial and awarded Gloria attorney fees and costs. Division One of the Washington Court of Appeals affirmed. The Washington Supreme Court granted review and affirmed the Court of Appeals and the fee awards.

## DISPOSITION

affirmed

## CASES CITED

- In re Marriage of Matson, 107 Wn.2d 479, 482-83, 730 P.2d 668 (1986)
- In re Estate of Crawford, 107 Wn.2d 493, 730 P.2d 675 (1986)
- In re Marriage of Hadley, 88 Wn.2d 649, 565 P.2d 790 (1977)
- Friedlander v. Friedlander, 80 Wn.2d 293, 494 P.2d 208 (1972)
- Hamlin v. Merlino, 44 Wn.2d 851, 272 P.2d 125 (1954)
- In re Marriage of Foran, 67 Wn. App. 242, 251 n.7, 834 P.2d 1081 (1992)
- Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003)
- In re Marriage of Hall, 103 Wn.2d 236, 246, 692 P.2d 175 (1984)
- In re Marriage of Zier, 136 Wn. App. 40, 47, 147 P.3d 624 (2006)
- In re Marriage of DewBerry, 115 Wn. App. 351, 365, 62 P.3d 525 (2003)
- Stringfellow v. Stringfellow, 53 Wn.2d 359, 333 P.2d 936 (1959)
- In re Marriage of Sacco, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990)
- In re Marriage of Bernard, 137 Wn. App. 827, 155 P.3d 171 (2007)
- In re Marriage of Bernard, 163 Wn.2d 1011, 180 P.3d 1290 (2008)
- Pinkis v. Network Cinema Corp., 9 Wn. App. 337, 512 P.2d 751 (1973)

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