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Practice considerations for waivers of spousal maintenance in prenuptial agreements

By Mark Randall

While for the most part in the United States prenuptial agreements are accepted as binding and enforceable, each state has its own public policy, statutes and case law that must be followed to ensure that an agreement has been entered into properly. In New York, there is a strong presumption regarding the validity of prenuptial agreements with the underlying premise that parties can decide their own interests through such agreements. Prenuptial agreements are given the same presumption of legality as any other contract, and may only be set aside upon a showing that it is unconscionable, the result of fraud, duress, or where it is shown to be manifestly unfair to one spouse because of overreaching on the part of the other spouse.

Because prenuptial agreements are state specific, it is critically important to remain vigilant regarding case law impacting a court's examination of the enforceability of such agreements. Case in point: a recent New York trial court decision, examining the attack on the enforceability and validity of a prenuptial agreement on the basis of unconscionability,[1] listed a number of best practices to follow when negotiating and drafting a prenuptial agreement containing a waiver of spousal maintenance (i.e. alimony).

1. Under New York law, an unconscionable agreement "is one which no person in his or her senses and not under delusion would make on the one hand, and no honest and fair person would accept on the other, the inequality being so strong and manifest as to shock the conscience and confound the judgment of any person of common sense" (Ku v. Huey Min Lee, 151 AD3d 1040, 1041 [2d Dept 2017]). Relevant here, unconscionability is found when a prenuptial agreement is manifestly unfair given the nature and magnitude of the rights waived and in light of the vast disparity in net worth between the parties (see Smith v. Smith, 129 AD3d 934, 935 [2d Dept 2015]).

In the matter of *J.M v. G.V.*,[2] the trial court (Justice Jeffrey S. Sunshine)[3] was presented with a matter of first impression: "whether when waiving spousal maintenance, it is required that a self-represented spouse-to-be entering into a prenuptial agreement…be provided with the presumptive maintenance calculations in order to knowingly waive spousal maintenance." In short, Judge Sunshine answered with a resounding and well-reasoned "Yes."[4]

In *J.M. v. G.V.*, the parties entered into a prenuptial agreement one week prior to their marriage. During the negotiation and execution of the prenuptial agreement, the wife-to-be was represented by counsel, but her husband-to-be was not. Following the commencement of an action for divorce by the wife, the husband moved for summary judgment to set aside the prenuptial agreement on the basis that the agreement was unconscionable, fraudulent, and/or the result of overreaching.

2. 2025 N.Y. Slip Op. 25004 (Sup. Ct., Kings Co. Jan. 2, 2025).
3. Even though this was a trial court decision, great weight has been afforded the decision because of the presiding judge: Justice Jeffrey S. Sunshine, a well-regarded and respected jurist and the Statewide Coordinating Judge for Matrimonial Matters and the Chair of the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee.
4. In New York, spousal maintenance is calculated pursuant to the New York Post-Divorce Maintenance Guidelines (Domestic Relations Law 236 (B)(6)). The Guidelines provide two formulas to determine the amount of spousal maintenance on income up to $228,00 to be paid from the higher earning spouse to the lower earning spouse. The formula to apply to the calculation depends on whether the parties have children (the "lower formula") or do not have children (the "higher formula"). The specific formulas may be accessed here: https://www.nycourts.gov/LegacyPDFS/divorce/forms_instructions/NoticeGuidelineMaintenance.pdf.

At the time of the execution of the prenuptial agreement, the wife had a net worth of more than $455,000, and the husband had a net worth of $27,000. At the time of the divorce commencement, the husband earned approximately $30,000, and the wife earned in excess of $150,000. Under New York's Maintenance Guidelines, the husband, as the lower earning spouse, may have been entitled to receive spousal maintenance from the wife, the higher earning spouse; however, under the terms of the prenuptial agreement the husband waived any right to seek spousal maintenance from the wife.

Concerning the waiver of spousal maintenance, the husband argued that at the time he executed the prenuptial agreement he was unaware of what he was waiving because there was no disclosure of the wife's income and earning capacity, nor were there any calculations performed or provided as to the maintenance amount he would have been entitled to receive per New York's post-divorce maintenance guidelines. It is this claim by the husband that Judge Sunshine examined in earnest.

Judge Sunshine reasoned that while parties may waive spousal maintenance, such a waiver must be based upon a "knowing waiver". Specifically, a party waiving maintenance must know what the calculated guideline amount of spousal maintenance would be without said waiver.

Based on this reasoning, Judge Sunshine found that the "knowing waiver" would only be satisfied if both parties provided: (i) their incomes as of the date of the prenuptial agreement; and (ii) the full calculation under the guideline formula. Absent the satisfaction of these requirements, the waiver of spousal maintenance would be invalid. As a result of his reasoning, Judge Sunshine held that "because the full presumptive maintenance calculations were not provided to the [husband], who was not represented by legal counsel, the entire provision related to spousal maintenance must be vacated."[5]

Even though the *J.M v. G.V.* decision specifically deals with the circumstances where only one of the parties to a prenuptial agreement is self-represented, it is inevitable that the reasoning and decision by Judge Sunshine will be cited by a represented party to a prenuptial agreement seeking to invalidate the spousal waiver provision. As such, the takeaways from this decision by Judge Sunshine concerning the waiver of spousal maintenance are clear, and going forward, the following are some best practice tips for New York prenuptial agreements (this may prove to be useful in other jurisdictions as well) containing a waiver of spousal maintenance:

1. Fully disclose the income of each party (by way of example, producing the prior two years of filed tax returns with the financial statement setting forth the party's assets and liabilities);
2. Include in the prenuptial agreement not only the exact statutory language of the maintenance guidelines, but the resulting calculations based on each party's respective incomes at the time of the execution of the prenuptial agreement (these provisions should be included either as an attachment, or within the text of the prenuptial agreement itself, notarized or initialed by each party to prove acknowledgment; and
3. Include a severability clause in the prenuptial agreement (as noted by Judge Sunshine, the severability clause in the parties' prenuptial agreement rendered the remainder of the agreement enforceable).

While the critical takeaway from the J.M v. G.V. decision concerns the requirements for the enforceability in New York of prenuptial agreements containing a waiver of spousal maintenance, this decision highlights the importance of practitioners in every state and country paying close attention to recent case law developments in their respective jurisdictions, regardless of whether a decision by the lowest or highest court in the land, to ensure continued compliance with any judicially articulated guidelines outlining the requirements of an enforceable prenuptial agreement.

5. 2025 N.Y. Slip Op. 25004 (Sup. Ct., Kings Co. Jan. 2, 2025).

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Mark Randall is a member of Pryor Cashman's Family Law Group. Mark's practice is focused on representing clients in complex divorce and child custody litigation in New York and Connecticut, as well as negotiating prenuptial and postnuptial agreements. His clients include high-net-worth individuals and public figures. He is a frequent lecturer and presenter on topics involving family law before various state bar associations, and has testified before the Connecticut General Assembly concerning pending family law legislation. Mark is currently the Chair of the Connecticut Bar Association Family Law Section.