

STATE OF MICHIGAN  
IN THE SUPREME COURT

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EARL H. ALLARD, JR.,  
Plaintiff-Appellant,

Supreme Court No.: 150891  
Court of Appeals No: 308194  
Circuit Court No.: 10-110358-DM

-vs-

CHRISTINE A. ALLARD,  
Defendant-Appellee,

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**DEFENDANT-APPELLEE'S ANSWER TO APPLICATION FOR LEAVE TO APPEAL**

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## STATEMENT OF JURISDICTION

The Wayne County Circuit Court's Judgment of Divorce, dated January 13, 2012, was a final order within the definition of MCR 7.202(6)(a)(i) as it was the first judgment that disposed of all claims and adjudicated the rights and liabilities of all parties. Defendant timely claimed her appeal on January 21, 2012. This Court of Appeals thus had jurisdiction pursuant to MCR 7.203(A)(1). Following the Court of Appeals decision Plaintiff timely sought leave to appeal and thus this Court has jurisdiction pursuant to MCR 7.301(A)(2).

## ISSUE PRESENTED

### Issue

**DID THE COURT OF APPEALS CORRECTLY RULE THAT A PRENUPTIAL AGREEMENT IS TO BE CONSTRUED ON ITS PLAIN LANGUAGE AND THUS CORRECTLY DETERMINE THAT THE PLAIN AND UNAMBIGUOUS MEANING OF THE AGREEMENT WAS THAT ONLY PROPERTY HELD IN EACH PARTY'S OWN NAME, AND NOT IN THE NAME OF SEPARATE CORPORATE ENTITIES, WAS INCLUDED THEREIN AND PROPERLY REMAND THIS MATTER FOR FURTHER FACTUAL FINDINGS?**

The trial court answered this question: No.

The Plaintiff-Appellant answers this question: No.

The Court of Appeals answered this question: Yes.

The Defendant-Appellant answers this question: Yes.

## INTRODUCTION

There were several jurisprudentially significant rulings in the trial court's opinion but, since they all went in favor of Plaintiff-Appellant, none of those have been brought before this Court. Instead, Plaintiff-Appellant, asks this Court to abandon the time-honored construction of prenuptial agreements, as contracts determined on their plain and unambiguous language and instead endeavor to determine what Plaintiff-Appellant "really meant" when he signed the antenuptial agreement. There is neither a jurisprudentially significant reason nor any profit in wading into that morass. The parties here signed an agreement (much of which severely disadvantaged Defendant-Appellee) with plain and unambiguous language. The Court of Appeals did no more, or less, than hold the parties to that language and thus should be affirmed.

## STATEMENT OF FACTS AND PROCEEDINGS

### *A Note on the Record*

The record in this case is of a respectable length, running some 748 pages just as to transcripts, including four days of trial. The pleadings herein, involving partial summary disposition, are also voluminous. One early summary disposition motion, which was taken under advisement and later resubmitted, was heard on 12/15/10. The remaining relevant proceedings occurred in 2011 and the various transcripts will be referred to by date, *e.g.*, TR 8/18/11, p \_\_.

### **Background**

Largely as a result of the unusual manner in which this case proceeded, and the trial court's limitations regarding what could be testified to, the parties' factual disputes below centered on just two areas, the first surrounding the signing and validity of the prenuptial agreement and the second addressing whether or not there was *any* marital estate here beyond some items of personal property. While the Defendant-Appellee disagreed below with the trial court's findings on both matters, such were largely made as a matter of law and excerpts of the trial court's opinion [Attached Exhibit 2] may thus be usefully offered here as a backdrop for discussing the legal questions herein, particularly as the Court of Appeals largely accepted the trial court's factual findings as accurate:

### **Procedural History**

The trial court's opinion, Attached Exhibit 2, p 2-3, offers a concise summation of the procedural travels of this case.

At trial, this Court took judicial notice of the court file, On July 28, 2010, plaintiff his complaint for divorce, On July 30, 2010, this Court entered an ex parte

order for marital asset protection.

On October 14, 2010, plaintiff filed a motion for partial summary disposition regarding the parties' antenuptial agreement. On December 15, 2010, this Court entered [sic] management order, consent order preserving the financial status quo and compelling discovery, and also conducted a hearing on plaintiff's summary disposition motion.

On January 7, 2011, this Court entered an order denying without prejudice plaintiff's motion for partial summary disposition, finding that it lacked supporting affidavits, depositions, admissions, or other documentary evidence establishing that no material factual issues regarding the validity of the parties' antenuptial agreement. On January 21, 2011, plaintiff a motion for reconsideration, which was denied on February 7, 2011.

On February 16, 2011, the Court entered a consent order for substitution of plaintiff's counsel. On March 4, 2011, defendant filed a motion for order to show cause alleging plaintiff violated the mutual restraining order, status quo order, and case management Defendant also filed a motion for attorney fees.

At the March 30, 2011 show cause hearing, this Court found plaintiff in contempt purchasing a home and boat in violation of the mutual restraining order and ordered plaintiff pay \$2,000.00 in sanctions. The Court dismissed the show cause against plaintiff for the violation of the financial status quo order, finding that the order was too vague to enforce. Court also dismissed the show cause as to the alleged violation of the case management regarding mediation. The Court awarded defendant \$10,000.00 in attorney fees.

On April 1, 2011, defendant filed a motion to disqualify plaintiff's second attorney, which was granted by this Court on April 8, 2011. On April 27, 2011, plaintiff's third and current attorney filed her appearance in this case.

On July 13, 2011, plaintiff filed a second motion for partial summary disposition regarding the antenuptial agreement. At a hearing held August 8, 2011, this Court granted plaintiff's motion, finding the parties' antenuptial agreement enforceable as a matter of law. On that same date, this Court denied defendant's motion to compel and extend discovery, but granted an extension of time for filing witness and exhibit lists and trial briefs.

On August 15, 2011, plaintiff filed a motion in limine seeking to restrict trial testimony as a result of this court's summary disposition ruling. On August 17, 2011, the Court granted plaintiff's motion in part. The trial was conducted on August 17, August 18, September 8, and September 14, 2011. On October 12, 2011, the parties filed closing statements and proposed findings of fact and conclusions of law. Opinion, Attached Exhibit 2, p 2-3.

### **Background Facts**

The trial court's findings as to the background facts here are not disputed:

The parties were married on September 11, 1993 in Grosse Pointe Farms, Michigan, and are the parents of two minor children born during the marriage: Earl Allard HI (DOB 12-05-1997) and Michael Allard (DOB 09-15-1999). Plaintiff filed a complaint for divorce on July 28, 2010.

Plaintiff currently resides at 597 Perrien Place, Grosse Pointe Woods,

Michigan 48236, a home that he purchased and moved into during the pendency of this divorce case, and in violation of a mutual asset restraining order. Defendant and the two minor children currently reside at 1036 Bedford, Grosse Pointe Park, Michigan 48230, a home, which plaintiff had purchased before the marriage, but which the parties shared with their children throughout the marriage.

Plaintiff is forty-nine years old, college-educated, and in good health.

Plaintiff is self-employed, operating six Michigan single-member limited liability corporations:

- Eastpointe Transitional Living LLC
- Grosse Pointe Properties LLC
- Eastpointe Transportation LLC
- Grosse Pointe Homecare LLC
- Eastpointe Apartment Group LLC
- New Detroit REO LLC

Each of these LLCs were formed and established during the marriage.

Plaintiff's main occupation is operating a home care business, Eastpointe Transitional Living LLC. According to the undisputed testimony of plaintiff's certified public accountant and qualified expert, James R. Graves, all of plaintiff's earned income, including the pass-through income from the LLCs, is reported on his personal tax returns. Plaintiff's total income reported in his 2010 federal tax return was \$276,661.00.

Defendant is forty-six years old, college-educated, and in good health. Until 1999, defendant worked full-time for an advertising firm. She earned an annual

salary of approximately \$35,000.00 in her last year of employment. Defendant left the workforce in 1999 when she became pregnant with the couple's second child. Since that time, defendant has not worked outside of the home and has not sought employment. Defendant testified that she plans to return to the workforce in the near future.

Since defendant left the workforce in 1999 to care for the children and household, plaintiff has been the sole provider for the family.

Opinion, Attached Exhibit 2, p 3-4.

### **The Antenuptial Agreement Here**

There is an antenuptial agreement at the center of this dispute. It can be found at Attached Exhibit 5. It is dated 9/9/93, two days before the parties' wedding. *Id.*, p 5; Opinion, p 3. Everyone agrees Defendant-Appellee did sign it. It is also not disputed that, immediately before signing it, she asked whether she could write "under duress," underneath her signature, which might be the most contemporaneous statement regarding such a signing this Court has ever addressed, and was something the trial court itself found to have occurred. TR, 4/8/11, p 23; Defendant-Appellee's Dep, p 44. The trial court also found that "it's clear that there would have been no marriage unless she signed."<sup>1</sup> TR, 8/8/11, p 14.<sup>2</sup> The agreement was prepared by

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<sup>1</sup> This was an easy finding, as everyone agreed that, in one form or another, this is what Defendant-Appellee was told, with some (Plaintiff-Appellant and his counsel) actually admitting to so telling her. Carrier Dep, p 25; Carlisle Dep, p 50 ("I know I told her that there would be no marriage without an agreement"); Plaintiff-Appellant's Dep, p 21; Defendant-Appellee's Dep, p 55 ("I was told by Earl on September 9<sup>th</sup>, before signing the agreement 48 hours before my wedding, that the wedding would be called off if the document wasn't signed.")

<sup>2</sup> Around 150 people were coming to the wedding two days later. Defendant-Appellee's Dep, p 29.

Attorney John Carlisle (Carlisle Dep, p 10-10) and notarized by Plaintiff-Appellant's second counsel in this matter, with a notary's statement as to it being voluntary and of Defendant-Appellee's own free act (TR, 4/8/11, p 23). This attorney, Brian Carrier, was however unable to offer any evidence regarding the supposed voluntariness he noted (*id.*, p 26-27) and he admitted he did not actually swear anyone in, inquire as to voluntariness or take administer the oath he inscribed as notary. Carrier Dep, p 19-22. Mr. Carrier did very much want to stay on the case representing Plaintiff-Appellant despite his role in witnessing both the signing and the supposed voluntariness.<sup>3</sup> TR, 4/8/11, p 24-26. The trial court disqualified Mr. Carrier from counsel due to his being a necessary witness. TR, 4/8/11, p 32-33.

Most readers will likely be apt to want to turn to the antenuptial agreement found at Attached Exhibit 5 at this point. The most operative paragraphs to this dispute are likely paragraphs 3-5 though, of course, the entire document should be visited by the readers:

3. Each party hereby waives and releases any and all rights and claims of every kind, nature, and description that he or she may acquire in the pre-marital estate or property of the other party as a result of the death of the other party, including (but not by way of limitation) any and all rights of intestacy, rights to dower, rights of election (including the right to elect against the decedent's will), rights to spouse's allowance, rights to maintenance, rights to homestead or allowance, rights to exempt property allowance, and rights to use of a dwelling house, under the present or future statutes and laws or common law of the state of Michigan or any other jurisdiction.

4. Each party shall during his or her lifetime keep and retain sole ownership, control, and enjoyment of all real, personal, intangible, or mixed property now owned, free and clear of any claim by the other party. However, provided that nothing herein contained shall be construed to prohibit the parties from at any

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<sup>3</sup> In an example of *really* missing the point regarding his the need for his disqualification Attorney Brian Carrier offered to be sworn in so that he could "testify under oath that there is nothing I can offer that will support their position." TR, 4/8/11, p 28-29.

time creating interests in real estate as tenants by the entireties or in personal property as joint tenants with rights of survivorship and to the extent that said interest is created, it shall, in the event of divorce, be divided equally between the parties. At the death of the first of the parties hereto, any property held by the parties as such tenants by the entireties or joint tenants with rights of survivorship shall pass to the surviving party.

5. In the event that the marriage of EARL H. ALLARD JR. and CHRISTINE A. BERTANI shall terminate as a result of divorce, then, in full satisfaction, settlement, and discharge of any and all rights or claims of alimony, support, property division, or other rights or claims of any kind, nature, or description incident to marriage and divorce (including any right to payment of legal fees incident to a divorce), under the present or future statutes and laws of common law of the state of Michigan or any other jurisdiction (all of which are hereby waived and released), the parties agree that all property acquired after the marriage between the parties shall be divided between the parties with each party receiving 50 percent of the said property. However, notwithstanding the above, the following property acquired after the marriage will remain the sole and separate property of the party acquiring the property and/or named on the property:

- a. As provided in paragraphs Two and Three of this antenuptial agreement, any increase in the value of any property, rents, profits, or dividends arising from property previously owned by either party shall remain the sole and separate property of that party.
  - b. Any property acquired in either party's individual capacity or name during the marriage, including any contributions to retirement plans (including but not limited to IRAs, 401(k) plans, SEP IRAs, IRA rollovers, and pension plans), shall remain the sole and separate property of the party named on the account or the party who acquired the property in his or her individual capacity or name.
- If the provisions of this paragraph or any other provision of this agreement shall be determined to be unenforceable by a court of competent jurisdiction, then such provisions shall be deemed separate and severable from all other provisions of this agreement, and all of the remaining provisions of this agreement shall continue in full force and effect.

Attached Exhibit 5, p 1-3.

Plaintiff-Appellant moved twice for summary disposition on the issue of the applicability of the antenuptial agreement, the first of which was taken under advisement by the trial court.

TR, 12/15/10, p 16 and later denied on January 7, 2011. Opinion, p 2. The second motion was

heard on 8/8/11. The trial court's ruling, running 8 pages, is too lengthy to excerpt but many readers may wish to visit it here, and it may be found at TR 8/8/11, p 36-44. In essence, the trial court found the agreement to be valid and enforceable. *Id.*

### **Motion in Liminae**

The first day of the trial, 8/17/11, saw the first fifty pages of transcript consumed with Plaintiff-Appellant's motion in liminae, arguing that the only issue for the court was "the amount of income available for child support," since the agreement precluded spousal support and it was Plaintiff-Appellant's position that, save for a few items of undisputed personal property, there was no marital estate to be divided. TR, 8/7/11, p 4-6. Following extensive argument and a recess, the trial court ruled as follows:

THE COURT: Okay. Thank you. And both parties are present. I'd like to first thank the attorneys for their -- the hard work they put into the motion in limine and the response, and the trial brief, they were well written, well argued, and I appreciate the time that they spent on it, on both of those efforts.

So with respect to the plaintiff's motion in limine, the court will grant in part and deny in part that motion. I do agree with plaintiff's attorney, that the existence of this valid prenuptial agreement does effect and govern the distribution of the properties in this case. However, I disagree that the testimony at trial should be limited only to the distribution of personal property and the calculation of child support. Like any other divorce case, one which would not involve a antenuptial agreement, this court must first identify, through testimony and

documentary evidence, the separate and marital properties of the parties.

However, because we have a valid antenuptial contract here, the scope of that direct testimony and cross-examination will be limited, in terms of relevancy, by the terms of the contract. So, we'll proceed in that fashion. I hope you understand what I just ruled.

TR, 8/17/11, p 35-36.

### **The Trial Court's Holdings**

The trial court made several legal rulings which underlie its eventual determinations. It found that the agreement usurped MCL 552.19. Opinion, p 5. It also found, and this relates to issues raised *infra*, that the agreement precluded the application of MCL 552.23 and MCL 552.401. Opinion, p 14. Spousal support was barred by the agreement and the parties reached a consent, which the trial court adopted and which is not disputed by either party here, in regards to custody and parenting time of the minor children. Opinion, p 14-16.

On child support, based on a finding of \$276,661 and \$0 for Plaintiff and Defendant respectively for 2010, and with a consent as to 84 overnights, the trial court found that the Michigan Child Support Formula (MCSF or "Formula") would result in support of \$3,041/month for two children and \$1,995/month for one child. Opinion, 16-17. In electing to deviate upwards, by \$1,000 per month in child support, the trial court made findings that concisely summarize the positions of the parties at the conclusion of its rulings in this case:

In distributing the couple's property pursuant to the antenuptial agreement, the net value plaintiff's separate estate exceeds \$900,000.006 while defendant's is approximately 95,000.00, virtually all of which are nondisposable funds.<sup>7</sup> Further,

under the contract, plaintiff awarded all of the real and business property acquired during this marriage, as well as the pre-marital home on Bedford, in which the parties have lived and shared with their children throughout the marriage. In fact, defendant has been living in the Bedford home with the children during the pendency of this divorce case. Because defendant will retain (by consent) sole physical custody of the minor children, it is undisputed that defendant will have to move and provide a new home for the children after the divorce. Based upon the uncontroverted evidence and property distribution in this case, defendant has limited available resources from which to finance and maintain her children's relocation. Thus, this Court will deviate from the child support formula and increase the amount of monthly child support by \$1,000.00, which represents the amount of the current monthly mortgage payment on the Bedford home.

Opinion, p, 18-20.

The judgment found at Attached Exhibit 1 followed on January 13, 2012 and Defendant-Appellee thereafter claimed her appeal.

### **The Court of Appeals Decision**

By now each reader will have read the Court of Appeals decision in this matter, which was lengthy and, on many issues, had interesting and important points to make on Michigan law. It is attached as Exhibit 6 for reference should any reader wish to revisit it. On this issue, the Court of Appeals held that because the agreement plainly referenced property held in the parties' own names, and because there was evidence that much of the property Plaintiff claimed was

covered by the agreement was, in fact, held in the names of various LLCs, which are obviously separate legal entities, “to the extent any real estate properties or other assets were acquired during the course of the marriage by the various LLCs created during the marriage” “their disposition in this divorce action is *not* governed by the antenuptial agreement. Exhibit 6, p 15 [emphasis in the original]. The Court of Appeals noted that significant income was attendant to the LLCs, and that there was a possibility of commingling between the LLCs, which might also, by another route, have brought assets Plaintiff sought to be excluded from the marital estate into that estate. The Court thus remanded for further findings on these issues, carefully avoiding any foray into appellate factfinding. Exhibit 6, p 16.

From this decision Plaintiff-Appellant timely sought leave to appeal and Defendant-Appellee now responds.

### Issue

**DID THE COURT OF APPEALS CORRECTLY RULE THAT A PRENUPTIAL AGREEMENT IS TO BE CONSTRUED ON ITS PLAIN LANGUAGE AND THUS CORRECTLY DETERMINE THAT THE PLAIN AND UNAMBIGUOUS MEANING OF THE AGREEMENT WAS THAT ONLY PROPERTY HELD IN EACH PARTY'S OWN NAME, AND NOT IN THE NAME OF SEPARATE CORPORATE ENTITIES, WAS INCLUDED THEREIN AND PROPERLY REMAND THIS MATTER FOR FURTHER FACTUAL FINDINGS?**

The trial court answered this question: No.

The Plaintiff-Appellant answers this question: No.

The Court of Appeals answered this question: Yes.

The Defendant-Appellant answers this question: Yes.

### ARGUMENT

#### Standard of Review

The interpretation of a prenuptial agreement, including whether the language of the agreement is ambiguous and requires resolution by the trier of fact, is reviewed *de novo* on appeal. *Reed v Reed*, 265 Mich App 131, 140; 693 NW2d 825 (2005).

\* \* \*

This Court reviews property distributions in divorce by first reviewing the trial court's factual findings for clear error, and then determining "whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). Questions of law are reviewed *de novo*. *Cardinal Mooney High School v Michigan High School*

*Athletic Ass'n*, 437 Mich 75; 467 NW2d 21 (1991).

### **The Basic Framework Here**

No sensible observer of Michigan law would deny that Michigan cases have, over the last several years, moved more toward a contractual law framework in addressing many different family law matters involving both antenuptial and postnuptial agreements. While there was a legitimate issue concerning the validity of this agreement, the Court of Appeals ruled against Defendant-Appellee on that point and no cross appeal has been claimed. Accordingly, Defendant-Appellee will accept in full the Court of Appeals decision and address only the issue Plaintiff-Appellant raises.

### **Preliminary Considerations**

The arrival of this Court's decisions in *Booth v Booth*, 194 Mich App 284; 486 NW2d 116 (1992) and *Rinvelt v Rinvelt*, 190 Mich App 372; 475 NW2d 478 (1991), effectively altered the course of Michigan law on antenuptial agreements, which previously were less than favored. The *Rinvelt* Court adopted the three part test of *Brooks v Brooks*, 733 P2d 1044 (Alaska, 1987), for Courts to assess the validity of such agreements:

1. Was the agreement obtained through fraud, duress, mistake, or misrepresentation, or nondisclosure of material fact?
2. Was the agreement unconscionable when executed?
3. Have the facts and circumstances changed since the agreement was executed?

*Brooks* at 1049.

Subsequent to *Rinvelt*, the Court of Appeals has repeatedly held the prenuptial agreements that survive the *Rinvelt/Brooks* test are to be enforced, even if they were entered into

prior to the arrival of *Rinvelt*. *Reed v Reed*, 265 Mich App 131; 693 NW2d 825 (2005). The Court of Appeals decision in *Reed* again reiterated that the proper role of a court when assessing a prenuptial agreement is *not* to determine whether it is “fair” or “equitable” but, rather, whether it is valid, as the test for validity in *Rinvelt* incorporates the necessary questions of fairness, *Reed* at 143, and further judicial alteration of the agreement of the parties is impermissible. *Id.*

### *Reed*

As *Reed* clearly held, adopting prior reasoning of the Court of Appeals, Antenuptial agreements are subject to the rules of construction applicable to contracts in general. Antenuptial agreements, like other written contracts, are matters of agreement by the parties, and the function of the court is to determine what the agreement is and enforce it. Clear and unambiguous language may be [sic] not rewritten under the guise of interpretation; rather, contract terms must be strictly enforced as written, and unambiguous terms must be construed according to their plain and ordinary meaning. If the agreement fairly admits of but one interpretation, even if inartfully worded or clumsily arranged, it is not unambiguous

*Reed* at 144-145.

Additionally, *Reed* made clear that construction of such agreements did indeed follow the terms indicated. Where *Reed*'s prenuptial agreement addressed property “acquired by either of them in an individual capacity. Accordingly, property acquired as tenants by the entirety was included in the marital estate, by the plain language of the agreement (the Garfield and Harbor

Springs properties) but excluded property owned by the defendant in his individual capacity, even if such was held in a partnership or assumed name.

### **This Case Has a *Reed*-like Agreement**

There is only a bit of daylight to be found between the applicable provisions of the antenuptial agreement in *Reed* and those that are seen here:

Separate Property. Except as herein provided, each party shall have complete control of his or her separate property, and may enjoy and dispose of such property in the same manner as if the marriage had not taken place. The foregoing shall apply to all property now owned by either of the parties and to all property which may hereafter be acquired by either of them **in an individual capacity**. *Reed* at 146.

However, notwithstanding the above, the following property acquired after the marriage will remain the sole and separate property of the party acquiring the property and/or named on the property:

- a. As provided in paragraphs Two and Three of this antenuptial agreement, any increase in the value of any property, rents, profits, or dividends arising from property previously owned by either party shall remain the sole and separate property of that party.
- b. Any property acquired in either party's individual capacity or name during the marriage, including any contributions to retirement plans (including but not limited to IRAs, 401(k) plans, SEP IRAs, IRA rollovers, and pension plans), shall remain the sole and separate property of the party named on the account or the party who acquired the property **in his or her individual capacity or name**. Agreement [Attached Exhibit 5], paragraph 5; Opinion, p 7. [Emphasis added].

Both agreements state that property acquired by the individuals during the marriage in their individual capacity will remain separate property. The instant agreement, however, highlighted an additional factor, whether the property was owned in a party's individual name.

### **The Distinction Between *Reed* and this Case**

As the Court of Appeals correctly noted, there is one distinction, and it is a large one, between this case and *Reed*, the involvement of LLCs. Exhibit 6, p 15. Unless the Court is to

forgo both MCL 450.4501, distinguishing between the LLC and its members, and the rule of *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650; 364 NW2d 670 (1984) that separate legal entities are just that, separate and distinct from their members, it is impossible to say that property held by an LLC is the same as property held by an individual “in his individual capacity or name.” Courts are not in the business of rewriting prenuptial agreements, *Reed*, and rather apply their plain language. Here the parties, for whatever reason, and even knowing that Plaintiff was a member of premarital LLCs, did not elect to include properties titled in the LLCs’ names or capacities.<sup>4</sup>

### **Income**

Additionally, as Defendant also pointed out to the Court of Appeals, and as Plaintiff free argued, Plaintiff’s position was that there was zero marital estate, meaning that all of the income earned during the marriage was, somehow, and contrary to *Hanaway v Hanaway*, 208 Mich App 278; 527 NW2d 792 (1995), never part of the marital estate. Once again, this was beyond the prenuptial agreement in this matter, which referred only to “property,” not “income.” Even though Plaintiff claimed essentially all income (in some years claiming no salary at all) as attributable to the LLCs, besides the LLCs themselves being excluded from the marital estate, *supra*, it is readily apparent that LLC income was effectively brought into the marriage.

More importantly, money from the marital estate, including even what meager income Plaintiff himself claimed, was used to fund the LLCs’ purchase of various real properties, meaning that there was a commingling of marital and supposedly (if the LLCs’ separate character

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<sup>4</sup> Defendant did specifically argue the LLC issue below, and this was thus not a *sua sponte* issue raised by the Court of Appeals.

is disregarded) separate funds, leading to both an inability to separate same in the eventual division, *McNamara v Horner*, 249 Mich App 177; 642 NW2d 385 (2002) and subjecting them to division as part of the marital estate. *Cunningham v Cunningham*, 289 Mich App 195; 795 NW2d 826 (2010).

Finally, though it is not nearly so large a part of the Court of Appeals analysis as Plaintiff wishes to make it, the Court did suggest that there was a question of piercing the corporate veil here which the trial court should consider. Exhibit 6, p 16; *Florence Cement Co v Vettraino*, 292 Mich App 461, 468-469; 807 NW2d 917 (2011). Given Plaintiff's rather absurdly low claims of personal income, totally out of character with the parties' lifestyle, there is a legitimate question as to whether the LLCs are being used by Defendant as mere instruments to fund his own lifestyle. While the prenuptial agreement plainly does not include such separate entities, the Court of Appeals also correctly noted that, even as to the premarital LLCs, there may be a question of whether, post-marital, such LLCs were commingled into the marital estate. *Cunningham*.

### **Conclusion**

While the Court of Appeals decision is quite important on some points, namely the inapplicability of MCL 552.23 and MCL 552.401 to prenuptial agreement situations, Defendant has accepted this ruling and no party has brought it before this Court. As a result, the only jurisprudentially significant aspects of the decision below are not before the Court. What remains instead is a party-specific decision addressing a party-specific prenuptial agreement and various separate legal entities which were not included, by the plain and unambiguous language of the agreement, in its terms. The Court of Appeals decision on this point is neither plainly

erroneous nor one that necessitates further review. Accordingly, leave to appeal should be denied.

**RELIEF REQUESTED**

Wherefore, Defendant-Appellant **CHRISTINE A. ALLARD**, respectfully requests that this Honorable Court deny leave to appeal and/or affirm the Court of Appeals December 18, 2014 decision, and grant her such other relief as is consistent with equity and good conscience.

Respectfully Submitted:

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*/s/ Kevin S. Gentry, P53351*

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