

Declaratory Judgments and Premarital Agreements: *In re Marriage of Best*

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Assume your divorcing client has signed a premarital agreement with her husband. He challenges its enforceability. Can she get a declaratory judgment determining her rights in advance of trial?

Until recently the answer seemed to be "no," based on the second district appellate court case *In re Marriage of Best*.¹ Clients were forced to wait until the court resolved the underlying petition for dissolution. The practical effect was to increase the burden on court dockets and the fees and costs to litigants.

The Illinois Supreme Court recognized the hardship court dockets and the fees and costs to litigants. created and reversed the appellate decision in *Best* to allow for declaratory judgments in advance of trial to determine the validity of a premarital agreement. This article describes the use and appealability of declaratory judgments in Illinois and the procedure by which premarital agreements may now be declared valid or invalid prior to a final trial and entry of a judgment for dissolution of marriage.

Declaratory judgment action

Although family law cases and premarital agreements are governed primarily by the Illinois Marriage and Dissolution of Marriage Act² and the Illinois Uniform Premarital Agreement Act,³ the Illinois Code of Civil Procedure and Supreme Court Rules offer useful tools in these cases. These include declaratory judgment actions found in Article 2 of the Code.⁴

A declaratory judgment action gives litigants a way to ask the court for direction when they doubt their rights or legal obligations under a contract or other written instrument.⁵ In the context of premarital agreements, it provides a speedy and relatively inexpensive means for parties to seek a judicial determination of the validity of a premarital agreement prior to a dispute over its enforcement.⁶

A declaratory judgment has the full force and effect of a final judgment or decree⁷ and is immediately appealable with the requisite Supreme Court Rule 304(a) finding.⁸ Entry of a declaratory judgment is proper if doing so would terminate at least some part of a controversy.⁹

Using declaratory judgments in divorce cases

In divorce, declaratory judgments enable clients to ascertain the validity of a premarital agreement at an early stage to help resolve divorce and custody matters and save the parties months, possibly years, of time and thousands of dollars in attorney fees by narrowing the issues at trial and scope of discovery. Obviously, courts and litigants need to know before trial whether marital rights are governed by a valid agreement, by the Illinois Marriage and Dissolution of Marriage Act, and the like. This in turn dictates what evidence to introduce and which burdens of proof apply.

The best way to do this is by way of declaratory judgment, in advance of trial and prior to entry of final judgment for dissolution of marriage, provided the statutory requirements of declaratory judgment are satisfied.

While this may seem apparent, the second district disagreed with this approach and disallowed the use of declaratory judgment to ascertain the validity of premarital agreements prior to trial.¹⁰ The *Best* appellate ruling acknowledged but rejected a long line of premarital agreement cases that have used declaratory judgment.¹¹

The Illinois Supreme Court responded by reversing the *Best* appellate decision and holding that "a reviewing court may consider the validity and effect of a declaratory judgment order in a dissolution proceeding even if it is entered before the final dissolution order, if the prerequisites of the declaratory judgment statute are met."¹²

Sequence of court proceedings in *In Re Marriage of Best*

In December 2002, Steven and Angela Best entered into a premarital agreement. Their marriage lasted only 13½ months before Steven filed for divorce. Steven later filed a motion for declaratory judgment.

The Circuit Court of Lake County conducted an evidentiary hearing on the motion and held that the premarital agreement "is valid and binding on the parties, and is enforceable." The court expressly found that both parties were represented by independent counsel and were neither under coercion nor duress when they signed the agreement.

Despite these findings, the court held that the waiver of attorney fees in the agreement did not apply to custody-related issues, thus leaving the door open for Angela to seek attorney fees from Steven for custody-related issues. The court included Supreme Court Rule 304(a) language in its written order, and Steven appealed.

Although no cross-appeal was filed, the second district sua sponte reversed the declaratory judgment order, finding that the statutory requirements for declaratory judgment had not been met. Consequently, the appellate court never reached the substantive issue of whether Angela could seek fees for custody-related matters.¹³ Based on the agreement of the parties and recommendations of court-appointed experts and evaluators, the trial court later awarded Steven permanent sole custody of the parties' son.

The Illinois Supreme Court granted Steven leave to appeal and reversed the appellate court's decision on the declaratory judgment issue. In doing so, the supreme court made a critical pronouncement that declaratory judgment is an appropriate means of ascertaining the validity of a premarital agreement and may be appealed in divorce cases with the requisite Supreme Court Rule 304(a) finding.

Declaratory judgment, in which the court makes a binding declaration of rights, has the force of a final judgment.¹⁴ Declaratory judgment is reviewable in the same manner as other final orders, judgments, or decrees, and where there are other claims pending, declaratory judgment may be appealed pursuant to Supreme Court Rule 304(a).¹⁵ Therefore, our statutes and Supreme Court Rules envision the type of interlocutory appeal brought by Steven Best and other divorce litigants in cases involving a declaration of rights in advance of entry of a final divorce judgment.

The fact that the subject matter of the declaratory judgment is a premarital agreement in a divorce case makes no difference. As the supreme court observed, the Declaratory Judgment Act imposes no limits on its use in divorce cases.

In fact, the legislature expressly provided for its use in divorce cases by incorporating the Civil Practice Law¹⁶ into the Illinois Marriage and Dissolution of

Marriage Act.¹⁷ So long as there is an actual controversy and the declaratory judgment terminates some part of that controversy, judgment may be entered and appealed the same as in any other case.

Notably, in *Best*, Steven sought relief under two markedly different statutes. He sought nondeclaratory relief under the Illinois Marriage and Dissolution of Marriage Act and declaratory relief under the declaratory judgment statute. Because the statutory requirements for declaratory judgment were met, declaratory judgment on the validity of the premarital agreement could be entered regardless of the entry of a dissolution judgment. That judgment could then be appealed immediately under Rule 304(a).

Fear of piecemeal appeals

The appellate decision in *Best* expressed undue fear that allowing declaratory judgment in divorce and pre-marital agreement cases would open the floodgates for piecemeal appeals under Supreme Court Rule 304(a). However, there is no statutory limit on the entry of declaratory judgment in divorce cases.

Provided the declaration of rights terminates a part of the controversy, declaratory judgment is permissible in divorce cases with all its attendant rights, including immediate appeal under Rule 304(a).¹⁸ Similarly, the entry of partial summary judgment is immediately appealable with a requisite Rule 304(a) finding,¹⁹ notwithstanding the appellate court's contrary statement in *Best*.

On the issue of piecemeal appeals, the supreme court in *Best* explicitly addressed and differentiated its 1983 decision in *In re Marriage of Leopando*.²⁰ In *Leopando*, the high court pronounced the well-known rule that a petition for dissolution of marriage advances a single claim and that custody, property division, maintenance, and the like are merely issues within that single claim. Therefore, a custody order that reserves other issues, such as property or maintenance, is not a final order and not immediately appealable with a Rule 304(a) finding. However, where a premarital agreement exists, the divorce court is dealing with two separate and independent claims with different statutory bases. The claim under the premarital agreement arises out of contract, while the other claim is based on remaining rights under the Illinois Marriage and Dissolution of Marriage Act.

Under these facts and circumstances, "the request for dissolution of the parties' marriage and the request for declaratory judgment on the validity and interpretation of the premarital agreement are not so closely related that they must be deemed part of a single claim for relief, as they were in *Leopando*."²¹

In contrast, where there is no valid premarital agreement, all issues are intertwined and arise from a single claim under the Illinois Marriage and Dissolution of Marriage Act. "The numerous other issues involved, such as custody, property disposition, and support are merely questions which are *ancillary*" to the dissolution cause of action.²² In such a case, under *Leopando*, no immediate appeal may be taken from a ruling on a single issue even if a Rule 304(a) finding is made.

Clearly, there is a judicial economy in allowing the court the discretion to enter a declaratory judgment on a premarital agreement and make a Rule 304(a) finding if doing so resolves a part or all of the controversy. Rule 304(a) requires a judge to consider the advisability of allowing an immediate appeal from a final order where there are other parties or claims pending.

Rule 304(a) was drafted to give the trial judge this discretion. Although the court need not make its declaratory judgment immediately appealable in all cases, it may choose to do so by inserting Rule 304(a) language in its order. This is the proper means of bringing such an appeal to the appellate court and permissible under *Best*.

Conclusion

Obviously, divorce has a significant financial impact on the lives of divorcing parties, who are paying for litigation out of their earnings and assets (no deep-pocket defendants here). To alleviate hardship, a stated purpose of the Illinois Marriage and Dissolution of Marriage Act is to promote settlement of disputes, make provisions to preserve and

conserve assets during the litigation, and mitigate the harm to spouses and children caused by the divorce process.²³

Declaratory judgment is an important way to achieve these goals and avoid unnecessary litigation where a premarital agreement is at issue and a binding declaration of rights can resolve some part of the divorce controversy. Allowing the appeal of this narrow class of decisions involving a declaratory judgment incident to divorce is consistent with the policy of discouraging piecemeal appeals while recognizing other important policies that militate in favor of immediate appeal under Supreme Court Rule 304(a). ■

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1. 369 Ill App 3d 254, 859 NE2d 173 (2d D 2006), *rev'd* by 228 Ill 2d 107, 886 NE2d 939 (2008).
2. 750 ILCS 5/101 et seq.
3. 750 ILCS 10/1 et seq.
4. 735 ILCS 5/2-701.
5. *Universal Underwriters Ins Co v Judge & James, Ltd*, 372 Ill App 3d 372, 379, 865 NE2d 531, 539 (1st D 2007).
6. 22A Am Jur 2d *Declaratory Judgments* §5.
7. *Universal* at 379, 865 NE2d at 539.
8. *Fremont Cas Ins Co v Ace-Chicago Great Dane Corp*, 317 Ill App 3d 67, 71, 739 NE2d 85, 89 (1st D 2000).
9. 735 ILCS 5/2-701(a).
10. *Best* (cited in note 1).
11. See e.g., *In re Marriage of Byrne*, 179 Ill App 3d 944, 535 NE2d 14 (1st D 1989); *Trossman v Trossman*, 24 Ill App 2d 521, 165 NE2d 368 (1st D 1960); *Genung v Hagemann*, 103 Ill App 2d 409, 242 NE2d 790 (2d D 1968) (all premarital agreement cases); *In re Marriage of Richardson*, 237 Ill App 3d 1067, 606 NE2d 56 (2d D 1992); *Stern v Stern*, 105 Ill App 3d 805, 434 NE2d 1164 (2d D 1982); *Stenson v Stenson*, 45 Ill App 3d 249, 359 NE2d 787 (1st D 1977) (all postnuptial agreement cases). See also

In re Marriage of Barnes, 324 Ill App 3d 514, 755 NE2d 522 (4th D 2001) (summary judgment used to determine the validity of premarital agreement).

12. *Best*, 228 Ill 2d at 119, 886 NE2d at 945.

13. Later, upon remand, the appellate court held that the premarital agreement "was intended to encompass fees incurred in litigation of custody and other child-related issues," but held it was "against public policy (and therefore unenforceable) as applied to the child-related issues." *In re Marriage of Best*, 2009 WL 80966 *1 (2d D 2009).

14. 735 ILCS 5/2-701(a).

15. *Fremont* at 71, 739 NE2d at 89.

16. 735 ILCS 5/2-101 et seq.

17. *Best*, 228 Ill 2d at 116, 886 NE2d at 944.

18. *Fremont* at 71, 739 NE2d at 89.

19. *Follis v Watkins*, 367 Ill App 3d 548, 855 NE2d 579 (4th D 2006); *Goodrich Corp v Clark*, Ill App 3d 1033, 837 NE2d 953 (4th D 2005); *Starr v Gay*, 354 Ill App 3d 610, 822 NE2d 89 (1st D 2004); *Com-Co Ins Agency, Inc v Service Ins Agency, Inc* 321 Ill App 3d 816, 748 NE2d 298 (1st D 2001); *Trotter v School Dist 218*, 315 Ill App 3d 1, 733 NE2d 363 (1st D 2000) (all allowing the immediate appeal of partial summary judgment under Rule 304(a)).

20. 96 Ill 2d 114, 449 NE2d 137 (1983).

21. *Best*, 228 Ill 2d at 115, 886 NE2d at 943.

22. *Leopando* at 119, 449 NE2d at 140 (emphasis in original).

23. 750 ILCS 5/102.