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## **The Connecticut Supreme Court Upholds Postnuptial Agreements**

If you plan to marry again and you have children from a prior marriage, you may wonder whether it is wise to have a prenuptial agreement. A prenuptial agreement clarifies the property settlement upon the death of a spouse or the dissolution of the marriage. For example, if your family owns a business and you are a shareholder, the other shareholders may want you to have a prenuptial agreement to protect the business. Under the prenuptial agreement, you seek to retain your interest in certain property like a business or an inheritance from your family in exchange for your new spouse receiving other property.

The problem is that just discussing a prenuptial agreement with your mate can put a crimp on your romance. Even if you and your fiancé intend to sign a prenuptial agreement before the wedding, sometimes the prenuptial agreement goes unsigned. Can you do a postnuptial agreement?

That very question faced the Connecticut Supreme Court for the first time in the case of *Bedrick v. Bedrick* (2011). Bruce and Deborah Bedrick met as undergrads at the University of Iowa. They returned to Connecticut to work for Mr. Auto Wash, the Hartford car wash business of Bruce's family. Bruce worked in sales and Deborah did the bookkeeping. They married in 1976. About one year after the wedding, they signed a postnuptial agreement waiving the right to alimony and agreeing to a cash settlement upon divorce. In 1986, Bruce bought the business from his father. In the early 1990s, the business expanded successfully to include a new facility in West Hartford. In 1991, after 16 years of marriage, when they were 41 years old, they had their only child, Bruce, Jr.

In 2007, Deborah filed for divorce. She sought alimony from Bruce. Bruce claimed that Deborah was only entitled to receive the amount provided for her under the postnuptial agreement. Bruce and Deborah had amended the postnuptial agreement five times. The last addendum in 1989 stated that Deborah receives \$75,000, she waives her interest in the business and she will not be liable on any of the business loans.

The trial court declined to enforce the postnuptial agreement. The Bedricks' combined assets were approximately \$927,123. The trial court ruled postnuptial agreements are not valid in Connecticut and even if they were valid, it would be unfair and inequitable to enforce a postnuptial agreement that provided only \$75,000 to Deborah. The court awarded \$392,372 in alimony to Deborah.

The Connecticut Supreme Court overturned the trial court on the law, but upheld the decision on the facts. The court noted that postnuptial agreements are not contrary to public policy; they encourage private resolution of family issues. By alleviating anxiety over financial uncertainty and obligations upon divorce and death, they do not encourage divorce but acknowledge the reality that some marriages end in divorce.

The Court conceded that spouses in a marriage do not contract under the same conditions as prospective spouses in a prenuptial agreement. Prospective spouses tend to have greater freedom to reject an unsatisfactory agreement. Prospective spouses tend to be more cautious in contracting than married spouses. Consequently, postnuptial agreements must be carefully scrutinized. The Court concluded that a postnuptial agreement can only be

enforced if it complies with applicable contract principles and the terms of the agreement are both fair and equitable at the time of execution and not unconscionable at the time of divorce. A postnuptial agreement is fair and equitable at the time of execution if it is made voluntarily and without undue influence, fraud, coercion, duress or similar defect. Each spouse must give full, fair and reasonable disclosure of the amount, character and value of property, both jointly and separately held, and all of the financial obligations and income of the other spouse. A court must consider each party's age, sophistication, education, employment, experience, or prior marriages in understanding the agreement, and access to independent counsel prior to signing the agreement.

At the time of divorce, a court must determine whether enforcing the agreement will cause an injustice. In this case, the Court noted that the last addendum to the postnuptial agreement was signed before (i) the initial success of the car wash business, (ii) the birth of their only child, (iii) when the parties were 41 years old, and (iv) the subsequent deterioration of the business in the 2000s. At the time of trial, Deborah was 57 years old and had worked in the business for 35 years. She kept the business afloat with her

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management skills during the deterioration of the business from 2001 to 2007. The Court found that it would be unconscionable to enforce the postnuptial agreement.

If you are considering a prenuptial or a postnuptial agreement, please consult us to assure that you are well protected.

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