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## Domestic Relations

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# DOMESTIC RELATIONS\*

## I. ANTENUPTIAL AGREEMENTS

In *Burtoff v. Burtoff*,<sup>1</sup> a case of first impression, the District of Columbia Court of Appeals upheld an antenuptial agreement establishing the spouses' rights to support upon divorce. The Burtoffs were a mature couple and each had adult children from previous marriages. They entered into an agreement providing Mrs. Burtoff with a lump-sum payment in lieu of alimony if they divorced. The size of the payment would depend on the length of the marriage.<sup>2</sup>

In upholding an agreement that considered the possibility of a future divorce, the court of appeals joined a growing number of jurisdictions that have upheld similar agreements.<sup>3</sup> Formerly, such agreements were widely held void *ab initio* on the public policy ground that they encouraged divorce.<sup>4</sup> In *Burtoff*, the court reasoned that since married couples, by means of an antenuptial agreement, have the right to settle their property rights upon the death of either spouse, they should also have the right to make provision for the settlement of their property if they should divorce. This includes the right to settle the issue of alimony in the antenuptial agreement.<sup>5</sup> The court, however, added that such antenuptial agreements must be carefully reviewed to insure fairness to both parties.<sup>6</sup> To insure such fairness, the court said it would be guided by the traditional standards employed in making alimony awards.<sup>7</sup> When a marriage is of short duration, like that of the Burtoffs' (less than one year), the court held that

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\* Cases not included because not sufficiently developmental of the law are: *Scott v. Scott*, 415 A.2d 812 (D.C. 1980) (court may not grant custody of child relying solely on Social Services Department report without first affording the parties the opportunity to examine and comment on it); *Rice v. Rice*, 415 A.2d 1378 (D.C. 1980) (court may not modify an unambiguous separation agreement absent change in circumstances).

1. 418 A.2d 1085 (D.C. 1980).

2. *Id.* at 1087.

3. *See, e.g.*, *Parniawski v. Parniawski*, 33 Conn. Supp. 44, 359 A.2d 719 (1976); *Posner v. Posner*, 233 So.2d 381 (Fla. 1970); *Volid v. Volid*, 6 Ill. App. 3d 386, 286 N.E.2d 42 (1972); *Buettner v. Buettner*, 89 Nev. 39, 505 P.2d 600 (1973); *Unander v. Unander*, 265 Or. 102, 506 P.2d 719 (1973).

4. *See, e.g.*, *Cohn v. Cohn*, 209 Md. 470, 121 A.2d 704 (1956).

5. 418 A.2d at 1088.

6. *Id.* at 1089.

7. *Id.* For a discussion of these factors, see *Quarles v. Quarles*, 179 F.2d 57 (D.C. Cir. 1949).

such an agreement is fair and reasonable since it allows each spouse to live as well as she or he lived before the marriage.<sup>8</sup>

In *Norris v. Norris*,<sup>9</sup> the District of Columbia Court of Appeals affirmed the voidance of an antenuptial agreement that waived the wife's right to alimony in the event of a divorce. The agreement was voided because it was neither fair and reasonable nor entered into voluntarily and freely after full disclosure of assets, as District of Columbia law required.<sup>10</sup> Mr. and Mrs. Norris were middle-aged, both having children by previous marriages. Mr. Norris proposed that his prospective wife sign an antenuptial agreement waiving all claims against his property—including alimony—in the event of divorce or his death. Mrs. Norris signed the agreement, against her attorney's advice and at Mr. Norris' insistence, one hour before their wedding. The court struck down the agreement for several reasons. The agreement was unfair because it did not contain any support provision for Mrs. Norris even though she sacrificed alimony benefits from her previous husband by remarrying. Secondly, the court looked unfavorably on the lack of a support provision for a woman who was untrained in any profession. Finally, the court found that Mr. Norris had failed to disclose his assets to Mrs. Norris before the agreement, and had not shown that Mrs. Norris entered into the agreement freely and voluntarily.<sup>11</sup>

*Norris* followed the *Burtoff* standards for evaluating antenuptial agreements. The difference in *Burtoff* was that the agreement provided for the wife in the event of divorce, and did not force her to give up a source of income upon remarrying (Mrs. Burtoff was also professionally trained as a nurse). In addition, the terms of Mrs. Burtoff's agreement, unlike Mrs. Norris', were negotiated ultimately by independent counsel. Finally, Mr. Burtoff had fully disclosed the amount of his wealth;<sup>12</sup> Mr. Norris had not.

## II. MARITAL PROPERTY

The District of Columbia Court of Appeals held, in *Brice v. Brice*,<sup>13</sup> that real property—here, the marital home—acquired by the husband shortly

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8. 418 A.2d at 1089.

9. 419 A.2d 982 (D.C. 1980).

10. See *Burtoff v. Burtoff*, 418 A.2d 1085, 1089 (D.C. 1980). The *Norris* contract specified that Florida law would govern. In reviewing the agreement, the court of appeals applied Florida law. However, the court noted that there was no conflict between Florida law and District of Columbia law, citing *Burtoff*, 419 A.2d at 984-85. In deciding *Burtoff*, the court of appeals also applied Florida law. *Burtoff*, 418 A.2d at 1088-89, citing *Posner v. Posner*, 233 So.2d 381 (Fla. 1970) and *Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla. 1962).

11. *Norris v. Norris*, 419 A.2d at 985.

12. *Burtoff v. Burtoff*, 418 A.2d at 1089-90.

13. 411 A.2d 340 (D.C. 1980).

before the marriage and held solely in his name could not be considered "marital property" under section 16-910(b) of the District of Columbia Marriage and Divorce Act of 1977.<sup>14</sup> As a result, the property was not distributable between the spouses upon divorce, and was awarded to the husband as his "sole and separate" property under section 16-910(a) of the Act.<sup>15</sup> *Brice* is the latest of a very small number of cases that have construed the property division provisions of the 1977 Act.<sup>16</sup>

In the first case construing these provisions,<sup>17</sup> the court said that the "sole and separate" property exemption was applicable if the untitled spouse had "little basis for an objectively reasonable expectation of an interest in that property."<sup>18</sup> In *Brice*, the court noted that the 1977 Act manifested no intent to abolish the pre-Act standard for measuring that expectation. Under that standard, the court would distribute individually owned property to the untitled spouse if that spouse could demonstrate a legal or equitable interest in it.<sup>19</sup> Mrs. Brice was unable to do this.<sup>20</sup>

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14. D.C. CODE §§ 16-910 to -923 (Supp. V 1978). The property division provisions of the Act read as follows:

Upon the entry of a final decree of annulment or divorce in the absence of a valid antenuptial or postnuptial agreement or a decree of legal separation disposing the property of the spouses, the court shall:

(a) assign to each party his or her sole and separate property acquired prior to the marriage, and his or her sole and separate property acquired during the marriage by gift, bequest, devise, or descent, and any increase thereof, or property acquired in exchange therefore; and

(b) distribute all other property accumulated during the marriage, regardless of whether title is held individually or by the parties in a form of joint tenancy or tenancy by the entireties, in a manner that is equitable, just and reasonable, after considering all relevant factors including, but not limited to: the duration of the marriage, any prior marriage of either party, the age, health, occupation, amount and sources of income, vocational skills, employability, assets, debts, and needs of each of the parties, provisions for the custody of minor children, whether the distribution is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of assets and income. The court shall also consider each party's contribution to the acquisition, preservation, appreciation, dissipation or depreciation in value of the assets subject to distribution under this subsection, and each party's contribution as a homemaker or to the family unit.

D.C. CODE § 16-910 (Supp. V 1978).

15. 411 A.2d at 344.

16. Two earlier cases are *Hemily v. Hemily*, 403 A.2d 1139 (D.C. 1979) and *Turpin v. Turpin*, 403 A.2d 1144 (D.C. 1979). See generally Gordon & London, *The Marital/Separate Property Distinction in the District of Columbia*, 29 CATH. U.L. REV. 939, 946-47 (1980).

17. *Hemily v. Hemily*, 403 A.2d 1139 (D.C. 1979).

18. 411 A.2d at 342-43, quoting *Hemily* at 1142-43.

19. 411 A.2d at 343. An equitable interest could be shown if, for example, the untitled spouse had made disproportionately high payments for maintenance and expenses.

20. 411 A.2d at 344.

## III. ADOPTION

The District of Columbia Court of Appeals held, in *In re J.M.A.L.*,<sup>21</sup> that absent the consent of all the parties, a court-ordered revocation of a relinquishment of parental rights filed in court by the natural parent<sup>22</sup> is justified only if the relinquishment was involuntary.<sup>23</sup> In this case, an adoption agency had denied a natural mother's petition to rescind her relinquishment because she had acted voluntarily. The written consent of all parties not forthcoming,<sup>24</sup> the court affirmed the lower court's denial of her petition. The court of appeals explained that certainty in relinquishment is essential. Adoption agencies and prospective adoptive parents rely on it, and the best interests of the child demand it.<sup>25</sup> The court here extended the approach it has followed for many years with respect to the revocation of consent to adoption.<sup>26</sup> Under this approach, once a parent's consent is given and acted upon, it cannot be withdrawn without cause. "Cause" means a finding that the consent was given involuntarily, *i.e.*, induced by fraud, coercion, material mistake, or similar factors.<sup>27</sup> The court, in *In re J.M.A.L.*, stated that this approach was equally viable in determining the effect of a relinquishment of parental rights.<sup>28</sup>

## IV. SEPARATION AGREEMENTS

In *Reynolds v. Reynolds*,<sup>29</sup> the District of Columbia Court of Appeals rejected a husband's contention that the separation agreement he had signed was void because of "misunderstood purpose." Mr. and Mrs. Reyn-

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21. 418 A.2d 133 (D.C. 1980).

22. This relinquishment was executed pursuant to D.C. CODE § 32-786(a) (1973). Adoption is a one or two step process in the District. Pursuant to D.C. CODE § 16-304(a) (1973), the natural parent may sign a statement consenting to the adoption by another person who is usually identified by the time the natural parent executes the consent. The natural parent transfers parental rights to the adoptive parent. The two-step procedure is set out in D.C. CODE § 32-786(a) (1973). The natural parent surrenders the child to an adoption agency and executes a relinquishment of parental rights that is then recorded and filed with the Family Division of the Superior Court. The agency is entrusted with the permanent care and guardianship of the child. In this situation, prospective adoptive parents may or may not yet be available. The relinquishment vests the agency with parental rights and it then has the right to consent to the eventual adoption of the child. 418 A.2d at 134-35.

23. 418 A.2d at 136.

24. See D.C. CODE § 32-786(a) (1973).

25. 418 A.2d at 135.

26. *Id.*

27. *In re Adoption of a Minor*, 144 F.2d 644, 647 (D.C. Cir. 1944); *In re Adoption of a Minor Child*, 127 F. Supp. 256, 258 (D.D.C. 1954); *In re Adoption of S.E.D.*, 324 A.2d 200, 202 (D.C. 1974).

28. 418 A.2d at 135.

29. 415 A.2d 535 (D.C. 1980) (*per curiam*).

olds had entered into a detailed agreement providing for conveyance of his interest in the marital home to her. He argued that he made the agreement not to settle property rights, but only to obtain VA financing for another home and to make a conciliatory gesture that might lead to reconciliation with his wife.<sup>30</sup> The court responded by holding that a separation agreement is void only where a party has signed under conditions of fraud, duress, concealment, or overreaching.<sup>31</sup> Alternatively, the court said that a separation agreement would be voided where a party could show that he suffered emotional distress so extreme that it impaired his mental capacity and thus deprived him of the ability to comprehend his act of signing.<sup>32</sup> But merely acting on bad advice or because of foolishness is irremediable. The court concluded that "misunderstood purpose" did not satisfy any of the tests stated above and that it did not merit inclusion as a new test for voiding a separation agreement where, as in *Reynolds*, the agreement set out the challenging party's rights and obligations in detail.<sup>33</sup>

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30. *Id.* at 536.

31. *See* *Lanahan v. Nevius*, 317 A.2d 521, 524 (D.C. 1974); *Davis v. Davis*, 268 A.2d 515, 517 (D.C. 1970); *Le Bert-Francis v. Le Bert-Francis*, 194 A.2d 662, 664 (D.C. 1963).

32. *See* *Jacobson v. Jacobson*, 277 A.2d 280, 283 (D.C. 1971).

33. 415 A.2d at 538.