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## Court of Appeals breaks 21-year silence on prenups

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In its first decision considering the validity of a prenuptial agreement in 21 years, the state's highest court has upheld a contract set aside by the Frederick County Circuit Court in 2003 as "draconian."

At the same time, the **Court of Appeals** clarified that a confidential relationship is still presumed to exist between affianced parties as a matter of law.

In its 47-page opinion yesterday, the court affirmed an intermediate appellate court's decision which last year validated the agreement John and Wendy Cannon reached prior to their 1994 marriage.

The arrangement, among other things, waived alimony, retirement benefits and a monetary award in the event of a divorce. It provided that each party would keep their own property and debts, that Wendy was to pay some of John's debts and household expenses and that Wendy and her children were to vacate the marital home upon 60 days' written notice.

The Court of Appeals disagreed with part of last year's opinion by the Court of Special Appeals. The intermediate court concluded the existence of a confidential relationship (a presumption that places the burden on the party seeking to enforce the agreement that the arrangement was fair) was a question of fact to be determined on a case-by-case basis.

"When parties in a pre-marital relationship enter an antenuptial agree-

ment where the consideration for the agreement is the impending marriage, a confidential relationship necessarily arises," Judge Glenn T. Harrell Jr. wrote for the court. "There is no gender consideration involved, and thus the [Equal Rights Amendment] is of no moment in the analysis because the parties are required to make mutual disclosures prior to entering the antenuptial agreement."

Rockville attorney James S. Maxwell, who represented John Cannon, called yesterday's decision "a contemporary application of the doctrine of confidential relationships."

The court "wanted to send both signals, to [be able to] invalidate situations where there has been overreaching without being aggressive," he said. "Our position was, he had an agreement — whoever had the burden, it didn't matter."

Interestingly, Maxwell noted, the court declined to adopt the Uniform Premarital Agreement Act, which eliminates a confidential relationship and requires the attacking party to bear the burden of proof in prenup cases. The uniform act has been adopted by a majority of states, he said.

When the Cannons signed their prenuptial agreement, bankruptcy proceedings had commenced against Wendy and her former husband, and John was concerned that his own assets would be in jeopardy.

Wendy Cannon filed for divorce in July 2002. She sought alimony and a share of marital property, alleging the prenup was invalid.

The circuit court agreed, concluding that the parties had intended the agreement to be temporary and to end

when the threat of creditors was over, and that there had been "an element of confidentiality" suggesting that Wendy had relied on the temporary nature of the arrangement.

The Court of Special Appeals reversed, upholding the agreement since, as the circuit court had admitted, a weighing of the various considerations actually favored its validity. The intermediate court refused to find that a confidential relationship existed, looking at the parties' age (both 37) as well as their financial, legal and employment experiences.

Though the top court disagreed on that point, it concluded that John Cannon — as the party attempting to enforce the agreement — had met his burden of proving the contract was fair.

The correct standard for determining the validity of an antenuptial agreement, the court noted, remained whether there was an "overreaching" — that is, "whether in the atmosphere and environment of the confidential relationship there was unfairness or inequity in the result of the agreement or procurement."

The amount of the Cannons' disclosure and knowledge regarding each other's assets favored the validity of the agreement — as did the fact that Wendy Cannon had the opportunity to seek independent legal advice, though she did not do so, the court said.

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