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Divorce Law—Equitable Distribution of Appreciated Nonmarital Property: Nardini V. Nardini, 414 N.W.2D 184 (Minn. 1987)

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CASE NOTE

Divorce Law - EQUITABLE DISTRIBUTION OF APPRECIATED NONMARITAL PROPERTY: *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987).

The Minnesota Supreme Court recently considered whether appreciated nonmarital property should be shared upon divorce.[1] The court held that marital property, which is subject to equitable division, includes the increase in value of nonmarital property attributable to the application of marital funds or to the efforts of one or both spouses.[2] The court's holding in *Nardini v. Nardini*[3] ignores the plain language of Minnesota's maintenance, support and property statute.[4] The court fashioned a rule in harmony with the policy behind the statute's enactment.[5]

Minnesota is one of many states which have enacted legislation based upon the doctrine of equitable distribution.[6] This doctrine recognizes the contributions made by each spouse to the marriage and calls for an equitable division of marital property.[7] The language of Minnesota's statute classifies property as either marital or nonmarital.[8] Property acquired during the marriage is classified as

1. *See* Nardini v. Nardini, 414 N.W.2d 184 (Minn. 1987).

2. *Id.* at 192.

3. *Id.*

4. *See infra* note 8 and accompanying text.

5. The statute, when read at face value, would exclude from equitable distribution all increases in value of property acquired before the marriage . The *Nardini* court instead focused on Minnesota Statutes Section 518.58, which requires the court to make a "just and equitable division of the marital property of the parties. . . ." That section also provides that the court may apportion nonmarital property to prevent unfair hardship. MINN. STAT. § 518.58 (1986 & Supp. 1987). The supreme court also noted that the uniform act, upon which Minnesota's statute is based, no longer refers to marital and nonmarital property. *Nardini*, 414 N.W.2d at 191-92; *see* UNIF. MARRIAGE AND DIVORCE ACT § 307, 9A U.L.A. 239 (1987) (hereinafter UMDA).

6. *See, e.g.*, MINN. STAT. § 518.54 (1986 & Supp. 1987). For a discussion of caselaw and legislation enacted in other states, see Freed & Walker, *Family Law in the Fifty States: An Overview*, 19 FAM. L. Q. 331 (1986).

7. Equitable distribution reforms the common law approach which allocated property solely on the basis of title. This system discriminated against the homemaker by awarding all of the property to the spouse who had directly acquired it. *See* L. GOLDEN, EQUITABLE DISTRIBUTION OF PROPERTY § 1.01, at 1-3 (1983); Krauskopf, *A Theory For "Just" Division of Marital Property In Missouri*, 41 MO. L. REV. 165, 168 (1976). *See, e.g.*, Note, *The Need to Value Homemaker Services Upon Divorce*, 87 W. VA. L. REV. 115, 121 (1984).

8. Minnesota Statutes Section 518.54, subdivision 5 provides, in pertinent part,

marital and is to be divided equitably between the parties, regardless of title.[9] Nonmarital property, which includes "property real or personal . . . acquired before the marriage . . . or the increase in value [of that property] . . . "[10] is not to be divided. The statute makes no distinctions based upon the reasons for an increase in value.[11] The doctrine of equitable distribution is not new to Minnesota.[12] The *Nardini* decision is significant, however, because it creates appreciation distinctions not found in the statute.[13] These distinctions strengthen the statutory presumption in favor of marital property,[14] and will ultimately result in more equitable property distributions.[15] Despite its contradiction of express statutory language, the *Nardini* decision is important to any practitioner attempting to understand this changing area of the law.

Under the common law approach to distribution, no rights to property arose because of the marriage itself.[16] A husband owned

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All property acquired by either spouse subsequent to the marriage and before a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of co-ownership. . . . The presumption of marital property is overcome by a showing that the property is nonmarital property.

"Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after a decree of legal separation; or

(e) is excluded by a valid antenuptial contract.

MINN. STAT. § 518.54, subd. 5 (1986 & Supp. 1987).

9. *Id.*

10. *Id.*

11. *See id.*

12. Minnesota's Marriage and Divorce Act, modeled after the UMDA, went into effect in 1979. Act of Apr. 5, 1978, ch. 772, § 48, 1978 Minn. Laws 1062, 1081 (codified at MINN. STAT. § 518.54 (1986 & Supp. 1987)).

13. The statute allows all increases in value of nonmarital property to be excluded from equitable distribution. *Id.* The *Nardini* court drew distinctions between increases which occurred because of the efforts of the parties and those increases in value which occurred because of the nature of the property itself. *Nardini*, 414 N.W.2d at 191.

14. Minnesota Statutes Section 518.54 contains a presumption in favor of marital property classification. This presumption is overcome, however, by a showing that the property is nonmarital. MINN. STAT. § 518.54, subd. 5 (1986 & Supp. 1987).

15. *See id.* Without the distinction created by the supreme court, the exceptions to distribution found in subdivision 5 would negate the equitable policy which is the foundation of Minnesota's divorce act. *See id.* Statutory exceptions to overall policy are to be narrowly construed. *See* MINN. STAT. § 645.19 (1986). *Compare* Flynn v. Flynn, 402 N.W.2d 111 (Minn. Ct. App. 1987) (*Flynn* set a precendent for permanent maintenance in Minnesota, and is reflective of the legislature's intent to protect parties to lengthy marriages).

16. Krauskopf, *supra* note 7, at 167.

all of his wife's possessions and could make use of her real property.[17] A wife could only obtain title to marital property if she survived her husband.[18] In the nineteenth century, Married Women's Property Acts were enacted granting women the right to own their own property.[19] No property interest arose, however, because of the marriage; if property was titled in the husband's name, it belonged to him.[20]

The doctrine of equitable distribution arose in the twentieth century as a legal response to the social, cultural and political changes which have taken place in this country.[21] By the 1930's, seventeen states had some form of equitable distribution.[22] In 1970, the Commissioners on Uniform State Laws promulgated the original draft of the Uniform Marriage and Divorce Act (UMDA)[23] as a means of solving many of the inequities which existed in marriage and divorce laws.[24] "[T]he Act provided that distribution of property upon divorce should be treated similar [sic] to the distribution of assets incident to the dissolution of a partnership."[25]

The original draft of the UMDA created a dual property system, establishing marital and separate property.[26] Property characterized

17. "The wife's only interest in the property of her husband was her dower, which depended on her surviving her husband." Note, *supra* note 7, at 115.

18. *Id.*

19. Krauskopf, *supra* note 7, at 167.

20. *Id.* "The principal flaw in common law concepts governing distribution of property upon divorce is that judicial inquiry generally focuses upon the situs of title to the marital assets to the exclusion of any consideration of the relative contributions of the marital partners . . . ." Harris, *The Arkansas Marital Property Statute and the Arkansas Appellate Courts: Tiptoeing Together Through the Tulips*, 7 U. ARK. LITTLE ROCK L.J. 1, 2 (1984).

21. These changes include the rise of the women's movement, the redefinition of traditional male and female roles within marriage and the dramatic rise in the divorce rate. GOLDEN, *supra* note 7, § 1.01, at 2.

22. *Id.* § 1.02, at 3.

23. *Id.* The UMDA served as a model classification scheme for many states. Section 307 of the Model Act provided that "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) property acquired by gift, bequest, devise or descent;
(2) property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise or descent;
(3) property acquired by a spouse after a decree of legal separation;
(4) property excluded by a valid agreement of the parties; and
(5) the increase in value of property acquired before the marriage.

UNIF. MARRIAGE AND DIVORCE ACT § 307 (1970). The original draft of section 307 also contained a rebuttable presumption in favor of marital property.

24. Note, *supra* note 7, at 122; *e.g.*, Krauskopf, *supra* note 7, at 166; Note, *Divorce and the Division of Marital Property in Arkansas - Equal or Equitable?* 35 ARK. L. REV. 671, 678-79 (1982).

25. Note, *supra* note 7, at 122.

26. "The . . . power to divide property was not extended to all property (includ-

as marital would be divided between the parties, while nonmarital property would be excluded from division.[27] In 1973, the Commissioners revised the Act to create alternative proposals.[28] The recommended alternative no longer distinguishes nonmarital from marital property.[29] It states that a court shall equitably apportion between the parties "the property and assets belonging to either or both however and whenever acquired . . . ."[30] Thus, the revised version of the UMDA would subject all property to equitable distribution.[31]

Many states have enacted equitable distribution statutes based upon the original draft of the UMDA.[32] These statutes classify property into two categories: property subject to distribution (marital property) and property which is not (separate or nonmarital property).[33] Often these statutes define marital and separate property.[34] Other statutes define one class of property with the residue falling into the other class.[35] Certain states have created distribution statutes with a presumption favoring marital property.[36] In states without statutory presumptions, courts have created marital

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ing separate property) owned by the spouses because the shared enterprise or partnership theory is inherently applicable only to property acquired during the marriage through the effort of the spouses." Krauskopf, note 7, at 173.

27. *Id.*

28. Alternative A of revised section 307 does not refer to marital and nonmarital property. It provides for an equitable distribution of the parties' property, whenever and however acquired. Alternative B follows the originial draft of section 307. It was created for those states which prefer to adhere to the dual classification system. UMDA § 307, comment, at 314 (1973). The Commissioners felt that the dual classification system hindered the cause of equitable distribution because it excludes some property from division. *Id.*

29. Several other state statutes allow their courts to allocate nonmarital property on an ad hoc method. GOLDEN, *supra* note 7, § 5.02, at 94 n. 6. UMDA, § 307, 9A U.L.A. at 238-40 (1987). "In spite of the Commissioners' admonitions, only Montana has adopted this version of § 307." *Id.*

30. UMDA § 307, Commissioners' Comment 1973, 9A U.L.A. at 142.

31. *Id.*

32. Forty-eight states plus the District of Columbia have enacted some form of equitable distribution legislation based upon the UMDA. *See* McLindon, *Separate But Unequal: The Economic Disaster of Divorce For Women and Children*, 21 FAM. L. Q. 351 (1987).

33. This dual classification system is derived from the community property doctrine which is based on a scheme of dual classification. However, "[e]quitable distribution differs from pure community property in that the division of property should be equitable and not necessarily equal." GOLDEN, *supra* note 7, § 2.01, at 18-19.

34. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-318 (Supp. 1987); ILL. ANN. STAT. ch. 40, para. 503 (Supp. 1987); ME. REV. STAT. ANN. tit. 19, § 722-A (1981).

35. *See* Note, *supra* note 7, at 122.

36. Some states apply this presumption to property acquired subsequent to the marriage, others apply it to property acquired during the marriage. *See* Graham, *Using Formulas to Separate Marital and Nonmarital Property: A Policy Oriented Approach to the Division of Appreciated Property Upon Divorce*, 73 KY. L. J. 41, 44 (1984).

presumptions themselves.[37]

The precise issue in *Nardini* was the classification of separate property that had increased in value during the marriage.[38] Other jurisdictions have resolved the issue in differing ways.[39] Some courts use an "inception of title" approach, characterizing property at the moment title is acquired.[40] Others have adopted the "source of funds" rule, characterizing property as each payment towards its acquisition is made.[41] Still other jurisdictions employ a "transmutation" approach.[42] This classifies property on the basis of the parties' intent.[43]

Minnesota is generally considered to be a source of funds/allocation jurisdiction.[44] However, the simplistic language of our statute has resulted in a confused standard of allocation.[45] The Minnesota Supreme Court attempted to resolve the confusion when it decided *Schmitz v. Schmitz*.[46] The Schmitz' acquired their home by making an $8,000 downpayment from the husband's nonmarital funds.[47] The remaining mortgage was paid with marital funds.[48]

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37. *See* Painter v. Painter, 65 N.J. 196, 217, 320 A.2d 484, 495 (1974).

38. *Nardini*, 414 N.W.2d at 190.

39. *See* Note, *Equitable Distribution: Approaches To Apportionment*, 87 W. VA. L. REV. 95, 97 (1984).

40. *See In re* Cain, 536 S.W.2d 866, 872-75 (Mo. 1976) (marital funds used in mortgage payments did not alter status of nonmarital property). The Missouri Supreme Court has since abandoned this inception of title approach in favor of the "source of funds" rule. *See In re* Hoffman, 676 S.W.2d 817, 825 (Mo. 1984).

41. A single item of property may be to some extent nonmarital and the remainder marital. "The divorce court must, therefore, separate marital and nonmarital property by tracing from the evidence adduced the contributions each may have made to the acquisition of a particular item." Tibbetts v. Tibbetts, 406 A.2d 70, 75 (Me. 1979); *e.g.*, Brandenburg v. Brandendurg, 617 S.W.2d 871 (Ky. Ct. App. 1981); Hall v. Hall, 462 A.2d 1179 (Me. 1983); Harper v. Harper, 294 Md. 54, 448 A.2d 916 (1982).

42. The status of property can be altered by evidence that the parties intended such a result. Courts have found a change in the character of property through commingling or joint use of marital and separate property. Courts which use the "source of funds" approach, *see supra* note 41, have little need for transmutation, as they allocate property between marital and nonmarital interests. *See In Re* Marriage of Smith, 86 Ill. 2d 518, 427 N.E.2d 1239 (1981) (failure of nonmarital property holder to segregate property gave rise to transmutation).

43. The evidence necessary to prove transmutation varies from court to court. *See generally*, GOLDEN, *supra* note 7, § § 5.33-.34, at 132-34; Note, *supra* note 39, at 101-03.

44. *See*, GOLDEN, *supra* note 7, § 5.32, at 131.

45. Although the statute contains a presumption in favor of marital property, subdivision 5(c) indicates that any increase in value to nonmarital property will be excluded from the marital estate. MINN. STAT. § 518.54, subd. 5(c) (1986 & Supp. 1987). This language suggests a "title" approach to distribution, despite the intent of the drafters to promote equitable distribution along partnership lines. *See id.*

46. 309 N.W.2d 748 (Minn. 1981).

47. *Id.*

Mr. Schmitz relied upon the statute, which characterizes property acquired in exchange for nonmarital property as nonmarital.[49] The court, however, focused on a decision by the Kentucky Court of Appeals,[50] and held that the increase in equity should be apportioned between marital and nonmarital interests.[51]

Subsequently, the court decided *Brown v. Brown*[52] and *Faus v. Faus*.[53] These cases reiterated the *Schmitz* source of payments rule,[54] and added that sums expended for improvements to nonmarital property were attributable to the efforts of the parties' and constituted marital property.[55] Despite the holdings in *Schmitz*, *Brown*, and *Faus*, the lower courts remained uncertain of the proper allocation standard.[56] This uncertainty was largely due to the conflict between the court's interpretation of the statute and the plain meaning of the statute.[57]

Minnesota's dissolution statute provides that nonmarital property includes the increase in value of nonmarital property.[58] The *Schmitz* decision, however, suggested a distinction between increases in

48. The balance of the purchase price of $38,000 was $30,000. *Id.* at 748.

49. *Id.* at 750. *See supra* note 8.

50. At the time of trial the homestead had a market value of $79,300, yet Mr. Schmitz argued that the property was entirely nonmarital because of his $8,000 downpayment. Reliance on Minnesota's statutory language would have resulted in an unjust result. Instead, the court based its decision on Woosnam v. Woosnam, 587 S.W.2d 262 (Ky. Ct. App. 1979), in its recognition of "the marital character of appreciation attributable to the joint or team efforts of the spouses . . . ." *Schmitz*, 309 N.W.2d at 750.

51. *Schmitz*, 309 N.W.2d at 750.

52. 316 N.W.2d 552 (Minn. 1982).

53. 319 N.W.2d 408 (Minn. 1982).

54. *Schmitz*, 309 N.W.2d at 750. The court articulated the "*Schmitz* rule" in *Brown*:

> The present value of a nonmarital asset used in the acquisition of marital property is the proportion the net equity or contribution at the time of acquisition bore to the value of the property at the time of purchase multiplied by the value of the property at the time of separation.

Brown, 316 N.W.2d at 553.

55. *Id.* at 553-54.

56. *See, e.g.*, Johnson v. Johnson, 388 N.W.2d 47, 49 (Minn. Ct. App. 1986) (growth of husband's profit sharing fund marital in character); Doering v. Doering, 385 N.W.2d 387, 390 (Minn. Ct. App. 1986) (characterization of home as nonmarital despite marital improvements and marital loan). *But see* Tucker v. Tucker, 368 N.W.2d 335, 337 (Minn. Ct. App. 1985) (court looked to intent in division of nonmarital property).

57. As discussed *supra* note 51, the *Schmitz* decision was a departure from the exact language of Minnesota's statute. The *Schmitz* court quoted the applicable statute and authority from other jurisdictions. It only dealt with the conflict between the authorities by saying that it approved of the reasoning used in another jurisdiction. *Schmitz*, 309 N.W.2d at 750. By not confronting the inequities within the statutory language, the *Schmitz* court failed to provide direction for the lower courts.

58. MINN. STAT. § 518.54, subd. 5 (1986 & Supp. 1987); *supra* note 8.

value attributable to the efforts of the parties' and passive increases attributable to market variances.[59] The court of appeals, instead, drew a distinction between "appreciation" (nonmarital) and "income" (marital).[60] The conflict between the plain language of Minnesota's statute and the *Schmitz*, *Brown* and *Faus* decisions resulted in varying lower court decisions.[61]

The Minnesota Supreme Court attempted to resolve this conflict by deciding *Nardini*.[62] In *Nardini*, the court addressed the question of whether one-half of a business, owned by a couple for over thirty years, could be characterized as a nonmarital asset.[63] Ralph Nardini purchased a fifty percent interest in the predecessor business in 1949 for $2,500.[64] Ralph and Marguerite Nardini were married in 1953.[65] Marguerite worked as a bookkeeper for the company during the early years of the marriage.[66] She raised the couple's two children, kept their house and was active in numerous civic and charitable organizations.[67] Ralph worked as a "key man" by recruiting customers for the business.[68] The couple acquired sole interest in the business in 1956 for $12,000, and renamed it Nardini Fire Equipment Company (Nardini of Minnesota).[69]

The Nardinis obtained a divorce decree on June 28, 1985.[70] At that time, Nardini of Minnesota was a successful corporation with $563,598 of retained earnings.[71] Nevertheless, the trial court ac-

59. *Schmitz*, 309 N.W.2d at 750.

60. *See, e.g.*, Linderman v. Linderman, 364 N.W.2d 872 (Minn. Ct. App. 1985).

61. *E.g.*, Riley v. Riley, 369 N.W.2d 40, 43 (Minn. Ct. App. 1985) (traceable assets classified as nonmarital); Rosenberg v. Rosenberg, 379 N.W.2d 580, 584 (Minn. Ct. App. 1985) (only twenty-five percent of appreciation of closely held business classified as marital property). *But see* Johnson v. Johnson, 388 N.W.2d 47, 49 (Minn. Ct. App. 1986) ("Marital judgment governs decisions for spending or saving income of a couple, and there is no rational basis for distinguishing the effects of that judgment on income from different sources.")

62. *Nardini*, 414 N.W.2d at 184.

63. *Id.* at 190.

64. Nardini v. Nardini, 385 N.W.2d 339, 340 (Minn. Ct. App. 1986). At trial, Mrs. Nardini testified that Ralph purchased a half interest in only a portion of the predecessor business. *Id.* This seems likely as the Nardinis paid $12,500 for the rest of the business only a few years later.

65. *Nardini*, 385 N.W.2d at 340.

66. *Nardini*, 414 N.W.2d at 186.

67. The supreme court found that these were contributions worthy of recognition. By assuming responsibility for their home and children, Marguerite enabled Ralph to devote his energy to the business. Through her charitable and civic work, Marguerite contributed to the goodwill of the company. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. The valuation of the family business was also an issue on appeal. However, the parties stipulated to retained earnings in the amount of $563,598. *Id.* at 195. The supreme court stated that "income earned during the marriage, whether distrib-

cepted Ralph's valuation of the company at $350,000, ignoring Marguerite's valuation of $725,000.[72] The trial court found that Ralph Nardini was entitled to one-half of Nardini of Minnesota as his nonmarital property because he acquired that interest four years prior to the marriage.[73] The remaining interest in the company would be split equally between Ralph and Marguerite.[74] The court also awarded Marguerite spousal maintenance of $1,200 per month for five years based on its finding that she was capable of training and employment.[75] The court of appeals affirmed, finding no error in the lower court's decision.[76]

On appeal, the Minnesota Supreme Court recognized the conflicting authority which the trial court had faced.[77] Nevertheless, the supreme court held the trial court had erred in assuming that because Ralph purchased a one-half interest in a business prior to the marriage, his nonmarital interest should forever be one-half.[78] The court found that Ralph's $2,500 investment in 1949 had been dwarfed by the overall success of the business. "[T]he record here reveals that over the course of more than 31 years, the marital partnership reinvested in Nardini of Minnesota $565,598 of retained earnings in addition to the $12,500 paid [for the remaining one-half of the business]. . . . "[79] The supreme court stated that the present value of the marital and nonmarital interests should be proportionate to the amounts of their respective investments, thereby appor-

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uted or undistributed and reinvested in the business, is marital property." *Id.* The court referred to the Commissioners' Note in the original draft of section 307 of the UMDA as authority for this statement. *Id.* at 193.

72. The trial court did not explain this part of its decision. It merely accepted Ralph Nardini's valuation amount. The court of appeals affirmed, noting that "it is within the trial court's discretion to choose one appraisal over another. . . ." *Nardini*, 385 N.W.2d at 342 (quoting Kostelnik v. Kostelnik, 367 N.W.2d 665, 669 (Minn. Ct. App. 1985)).

73. *Nardini*, 385 N.W.2d at 343.

74. *Id.*

75. *Id.* Despite the fact that Marguerite was fifty-five years old, had been married thirty-one years, had only a high school education, had a skin disease, and had no specific employment skills, the court was uncertain as to the necessity of a permanent award. Subdivision 3 of section 518.552 of Minnesota Statutes requires permanent awards in uncertain cases. However, because the statute had not been amended at the time of trial, the court of appeals declined to enforce it. *Id.* at 344.

76. *Id.* at 344.

77. *See supra* note 58. The conflict was between the statute and the supreme court's policy-oriented approach. The court stated that the simple language of the statute was deceptive in light of the complex valuation problems involved in dissolution cases. *Nardini*, 414 N.W.2d at 191.

78. *Id.* at 195.

79. *Id.*

tioning nearly the entire value of the business to the marital estate.[80]

The supreme court held that the trial court had likewise erred in its valuation of the family business.[81] The court found that the lower court had failed to take into consideration the relevant facts and the fundamental factors necessary for an accurate valuation of a closely held corporation.[82]

The court also held that the award of temporary maintenance amounted to an abuse of discretion.[83] After applying the relevant statutory criteria, the court found that Marguerite's chances for self-sufficiency were uncertain at best.[84] Because the statute requires

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80. Because of this, Ralph and Marguerite will share equally in the value of Nardini of Minnesota. *Id.*

81. *Id.* at 199.

82. The trial court accepted Ralph's valuation of the closely-held corporation (largely because of the persuasiveness of his attorney), and treated the transaction as a forced liquidation of a business. The supreme court held this to be error, stating that "the court must determine the value of the business as if the transaction were a sale of the entire business by a willing seller to a willing buyer." *Id.* at 189.

The supreme court stated that the appropriate starting point for valuation of a closely-held corporation may be its book value. It next enumerated eight factors which must be considered before a reasonable valuation can be made:

1. The nature of the business and the history of the enterprise from its inception.
2. The economic outlook in general and the condition and outlook of the specific industry in particular.
3. The book value of the stock and the financial condition of the business.
4. The earning capacity of the company.
5. The dividend-paying capacity.
6. Whether or not the enterprise has goodwill or other intangible value.
7. Sales of the stock and the size of the block of the stock to be valued.
8. The market price of stocks of corporations engaged in the same or a similar line of business having their stocks traded in a free and open market.

Nardini, 414 N.W.2d at 190 (footnote omitted). These factors, borrowed from Revenue Ruling 59-60, are to be applied with "common sense, sound and informed judgment, and reasonableness. . . ." *Id.* at 190. *See* Rev. Rul. 59-60, 1959-1 C.B. 237; *See also* Nehorayoff v. Nehorayoff, 108 Misc. 2d 311, 437 N.Y.S. 2d 584 (N.Y. Sup. Ct. 1981). *See generally* B. GOLDBERG, VALUATION OF DIVORCE ASSETS (Supp. 1987); GOLDEN, *supra* note 7, § § 7.01-.14, at 206-32.

83. *Nardini*, 414 N.W.2d at 195.

84. *Id.* at 198. Subdivision 2 of section 518.552 provides that:

> The maintenance order shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:
>
> (a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
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> (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;
>
> (c) the standard of living established during the marriage;
>
> (d) the duration of the marriage and, in the case of a homemaker, the

that uncertainty be met with an award of permanent maintenance,[85] the supreme court remanded the case for an award of permanent spousal maintenance.[86]

Despite explicit statutory provisions,[87] the Minnesota Supreme Court stated that "[t]he allocation of Nardini of Minnesota between marital and nonmarital interests rather understandably foundered on the shoals of unchartered waters."[88] The court described the statutory language as simplistic, and "out of harmony with the modern definition of property as a bundle of divisible rights. . . ."[89] The court found Minnesota's statute to be of little help in resolving the complex questions encountered in marriage dissolution cases.[90] As

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length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

(e) the loss of earnings, seniority, retirement benefits, and other employment opportunities foregone by the spouse seeking spousal maintenance;

(f) the age, and the physical and emotional condition of the spouse seeking maintenance;

(g) the abilty of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and

(h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

MINN. STAT. § 518.552, subd. 2 (1986).

The supreme court stressed the standard of living enjoyed by the Nardinis during their marriage. It asked the question: "[I]s the spouse seeking maintenance 'able to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment'?" *Nardini*, 414 N.W.2d at 197 (quoting MINN. STAT. § 518.552, subd. 1(b)). In Marguerite Nardini's case, the answer was no. *See, e.g.*, Krauskopf, *Maintenance: A Decade of Development*, 50 MO. L. REV. 259, 280 (Spring 1985), stating that "[a]fter a long marriage at an upper class standard of living, in which wives devote their time to assisting their husband's careers . . . it would not be appropriate to expect that homemaker to obtain employment as a clerk in a discount store . . ."

85. *See* MINN. STAT. § 518.552, subd. 3 (1986).

86. *Nardini*, 414 N.W.2d at 199. The court dismissed Ralph Nardini's contention that subdivision 3 should not be applied retroactively. The court stated that subdivision 3 could be applied because it had not changed the intent of the statute; it had merely corrected the statute's interpretation. *Id.* at 196; *see* MINN. STAT. § 518.552, subd. 3 (1986).

87. The language of section 518.54 may be simplistic, but it is hardly ambiguous. It states in rather straight-forward terms that the increase in value of nonmarital property is to be characterized as nonmarital. MINN. STAT. § 518.54, subd. 5(c) (1986). The court, however, apparently agreed with appellant's reasoning that the legislature could not have intended that the statute be taken literally. *See* Brief for Appellant at 12, Nardini v. Nardini, 414 N.W.2d 184 (Minn. 1987) (No. 85-1421).

88. *Nardini*, 414 N.W.2d at 190.

89. *Id.* at 191.

90. The statute does not suggest that any allocation of appreciated nonmarital property is necessary. However, the court regarded this merely as an oversight on

an example, the court pointed to the lack of a distinction between increases in value that occur prior to the marriage and increases that occur during the marriage.[91] There also was no distinction based upon either the nature or the cause of the increase in value.[92]

Because of its dissatisfaction with the language of the statute, the court turned to its own past decisions and to authority from other jurisdictions.[93] The court stated that, "the terms 'acquired before marriage' and 'increase' in the definition of nonmarital property have generally been interpreted in a manner consonant with the policy underlying the dissolution statutes."[94] As an example, the court cited the *Schmitz*, *Brown* and *Faus* cases. These decisions recognized that an asset may be comprised of both marital and nonmarital interests.[95] They also recognized that increases in value attributable to sums expended or to the efforts of the parties to nonmarital property should be marital in character.[96]

The *Nardini* decision was also based upon similar decisions in other states.[97] The court cited several cases which were decided using the *Schmitz* apportionment rationale.[98] Many of these cases were decided in jurisdictions having statutes similar to subdivision 5 of section 518.54.[99] As justification for its decision, the court stated that "[o]ther courts have made the distinction between increase in value attributable to the efforts of the parties and that attributable to external forces despite statutory language which appears to make no such distinction."[100]

Finally, the court attempted to resolve any remaining confusion in

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the part of the statute's drafters. It assumed that the drafters intended courts to perform allocation. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. By this statement, the court chose to treat Minnesota's statute as an exception to the general rule. *Id.* In fact, the statutory language is similar to that found in the statutes of other states. The decision actually follows the lead of other jurisdictions by creating distinctions not found in the statute. *See* GOLDEN, *supra* note 7, § § 5.28-.32, at 124-31.

95. *Nardini*, 414 N.W.2d at 191.

96. *Id.*

97. *Id.* at 191-92.

98. Tibetts v. Tibetts, 406 A.2d 70, 74 (Me. 1979) ("[I]t did not follow that where a part of property exchanged was nonmarital, the entire property acquired was, as a result, nonmarital."); *In re* Marriage of Herr, 705 S.W.2d 619 (Mo. Ct. App. 1986); Wade v. Wade, 72 N.C. App. 372, 325 S.E.2d 260 (1985). *But see* Bently v. Bently, 84 Ill. 2d 97, 101, 417 N.E.2d 1309, 1311 (1981) (all increase in nonmarital property is nonmarital property).

99. *See, e.g.*, McLeod v. McLeod, 74 N.C. App. 144, 327 S.E.2d 910 (1985) (court with statute similar to section 518.54 distinguished between increase in value attributable to the parties and those attributable to general economic conditions).

100. *Nardini*, 414 N.W.2d at 192. *See also* Cockrill v. Cockrill, 124 Ariz. 50, 52, 601

Minnesota's lower courts over the income/appreciation distinction. The court stated that property is properly classified on an active/passive basis.[101] Increases in value which are attributable to marital funds and marital efforts (active) constitute marital property.[102] Increases which are attributable to an increase in equity through mortgage payments (active), also constitute marital property.[103] Increases in value which are attributable to inflation and market forces (passive), however, constitute nonmarital property.[104]

The court's holding in *Nardini* marks a significant shift in marital property distribution in Minnesota.[105] The court confronted the conflict which exists between Minnesota's dissolution statute and the policies behind equitable distribution.[106] The plain language of the statute classifies any increase in value of nonmarital property as nonmarital.[107] That language is contrary to the policies behind equitable distribution legislation based on the model UMDA.[108] These policies treat marriage as a partnership to which each party contributes and from which each party should benefit.[109] The *Nardini* court exposed the inadequacies of Minnesota's distribution statute and the plight of long-term spouses.[110]

The *Nardini* decision, although not yet passed upon by the Minne-

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P.2d 1334, 1336 (1979); Van Newkirk v. Van Newkirk, 212 Neb. 730, 733-34, 325 N.W.2d 832, 834 (1982); Kelly v. Kelly, 86 Nev. 301, 305, 468 P.2d 359, 364 (1970).

101. *Nardini*, 414 N.W.2d at 192.

102. The court illustrated the distinctions through the use of a hypothetical dissolution. The hypothetical couple, John and Jane, owned real estate and stock prior to their marriage. The property and stock had increased in value by the time of dissolution. The court applied its active/passive distinction to John and Jane's situation and apportioned the appreciated property accordingly. *Id.* at 192-3. The court's illustration provides valuable insight to the court's active/passive distinction.

103. *Id.* at 193.

104. *Id.*

105. Prior decisions by the court failed to directly confront the inadequacies of the statutory framework. *E.g.*, *Schmitz*, 309 N.W.2d at 750. While the court in *Nardini* did not specifically request that the legislature redraft the statute, it did confront the specific statutory problems. The court's opinion also provides potential drafters with a framework from which to start. *See Nardini*, 414 N.W.2d at 191-92.

106. *Nardini*, 414 N.W.2d at 191. The decision points out that the statutory language is contrary to the intent of the drafters of the original section 307 of the UMDA. "The phrase 'increase in value' used in subsection (b)(5) is not intended to cover the income from property acquired prior to marriage." This is so whether the income is distributed or reinvested. UMDA § 307, Comment at 204 (1970).

107. MINN. STAT. § 518.54, subd. 5 (1986 & Supp. 1987).

108. "[T]he extent to which each of the parties contributes to the marriage is not measurable only by the amount of money contributed to it during its period of endurance but, rather, by the whole complex of financial and nonfinancial components contributed." *Nardini*, 414 N.W.2d at 192 (quoting Wood v. Wood, 119 Misc.2d 1076, 1079, 465 N.Y.S.2d 475, 477 (N.Y. Sup. Ct. 1983)).

109. *See id.*

110. By failing to recognize appreciation which results through the efforts of the

sota legislature, has helped to eliminate much of the inequity in Minnesota property distribution law.[111] The court applied the facts of the case to authority from other jurisdictions and to the principles behind the UMDA and drafted a well-reasoned opinion.[112] Under the *Nardini* holding, spouses can expect to be compensated for their contributions to a marriage.

The decision reflects the modern view of marriage as a partnership of equals.[113] It recognizes that both spouses contributed to the success of the business during their marriage.[114] Ralph Nardini invested $2,500 of his nonmarital funds into the business in 1949;[115] the couple reinvested the company's profits and their personal efforts into the business over the following thirty-two years.[116] It would have been grossly unfair to allow Ralph Nardini to exclude one-half of the business as his nonmarital asset.

Nardini v. Nardini reflects the court's intent to favor equitable distribution of property. The supreme court's decision establishes guidelines for the valuation and allocation of appreciated property.[117] The decision is also significant because it recognizes the legislature's intent to favor permanent awards of maintenance for long-term homemakers.[118] Practitioners must weigh the facts of each case in light of the factors enumerated in the court's decision before embarking on settlements and litigation.

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parties during a long-term marriage, the statute disregards the rights of the long-term homemaker who did not directly acquire the property. *Id.*

111. The *Nardini* decision rewards each party for contributions made during the marriage. This is ultimately more equitable than distributing property on the basis of when it was acquired. *See Nardini*, 414 N.W.2d at 192.

112. *Id.*

113. Nardini should have been easy to decide. The parties' long-term marriage and the proportion of the nonmarital assets to the marital reinvestments compelled the supreme court's holding. *Nardini*, 414 N.W.2d at 186-87.

114. *Nardini*, 414 N.W.2d at 192. Each spouse contributed in his and her own way through fulfillment of "traditional" roles. *See* Note, *supra* note 7, at 121. "The decision for one spouse to work at earning wages and for the other spouse to care for a home and children is a decision jointly made. However, upon divorce, the burden of the joint decision is disproportionately borne by the wife." *Id.*

115. *Nardini*, 414 N.W.2d at 186.

116. *Id.*

117. *Id.* at 190-195. *See also supra* notes 82, 102.

118. *Nardini* effectively overrules McClelland v. McClelland, 359 N.W.2d 7 (Minn. 1984); and Abuzzahab v. Abuzzahab, 359 N.W.2d 12 (Minn. 1984) (reserving permanent awards for "exceptional cases"). *See Nardini*, 414 N.W.2d at 199. The *McClelland* and *Abuzzahab* decisions were contrary to the legislature's intent to favor permanent awards of maintenance. *See Testimony of Senator Berglin before the Senate Judiciary Committee cited in* Oliphant, *Maintenance and Rehabilitative Alimony*, 1985 MINN. FAM. L. INST. 220, 221. Senator Berglin was the original author of section 518.552 in 1978. She testified that the legislature had not intended to deprive long-term homemakers of permanent maintenance.

Obviously, it is not yet known whether the Minnesota legislature will accept the reasoning of the *Nardini* court and make the necessary statutory changes. The supreme court has, however, taken a significant step. The *Nardini* court not only achieved a fair result, it also set an important precedent in Minnesota divorce law.

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