

Spring 1982

## In Re Marriage of Komnick: The Appreciation of Nonmarital Property in the Illinois Marital Property Distribution Scheme, 15 J. Marshall L. Rev. 531 (1982)

Ruth Miller

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### Recommended Citation

Ruth Miller, In Re Marriage of Komnick: The Appreciation of Nonmarital Property in the Illinois Marital Property Distribution Scheme, 15 J. Marshall L. Rev. 531 (1982)

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**IN RE MARRIAGE OF KOMNICK\*:  
THE APPRECIATION OF NONMARITAL  
PROPERTY IN THE ILLINOIS  
MARITAL PROPERTY  
DISTRIBUTION SCHEME**

The distribution of property upon the termination of marriage should be treated, as nearly as possible, like the distribution of assets incident to the dissolution of a partnership.<sup>1</sup>

This concept underlies the equitable property distribution scheme incorporated in the original Uniform Marriage and Divorce Act,<sup>2</sup> from which section 503 of the present Illinois Marriage and Dissolution of Marriage Act was derived.<sup>3</sup> Upon

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\* 84 Ill. 2d 89, 417 N.E.2d 1305 (1981).

1. UNIFORM MARRIAGE AND DIVORCE ACT § 307, Commissioner's Prefatory Note (Supp. 1977). See also Heyman, *The Illinois Marriage and Dissolution of Marriage Act: New Solutions to Old Problems*, 12 J. MAR. J. PRAC. & PROC. 1 (1978) [hereinafter cited as Heyman]; Krauskopf, *Marital Property at Marriage Dissolution*, 43 MO. L. REV. 157 (1978) [hereinafter cited as Krauskopf, *Marital Property*]; Krauskopf, *A Theory for "Just" Division of Marital Property in Missouri*, 41 MO. L. REV. 165 (1976).

2. UNIFORM MARRIAGE AND DIVORCE ACT § 307 (Supp. 1977). This version of the Act was adopted in 1971.

3. ILL. REV. STAT. ch. 40, § 503 (1979). The 1979 version of section 307 of the Uniform Act reads:

§ 307 [Disposition of Property]

(a) In a proceeding for dissolution of marriage . . . the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

- (1) contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
- (2) value of the property set apart to each spouse;
- (3) duration of the marriage; and
- (4) economic circumstances of each spouse when the division of property is to become effective . . . .

(b) For purposes of this Act, "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 valid agreement of the parties; and
- (5) the increase in value of property acquired before the marriage.

(c) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property

dissolution of a marriage under the Illinois scheme, property is characterized as either marital or nonmarital.<sup>4</sup> Marital property is to be divided between the parties in just proportions, considering certain relevant factors.<sup>5</sup> In *In re Marriage of Komnick*,<sup>6</sup> the Illinois Supreme Court discussed whether there are any situations in which property not expressly described in the statute as nonmarital should be classified as such and thus not subject to division.

In *Komnick*, the dispute centered around a tract of land devised to the husband during marriage. Neither party claimed that the land was marital property. The wife did claim, however, that the appreciation in value of the land, from the time of its acquisition until the time of dissolution, was marital property and thus subject to equitable distribution.<sup>7</sup> The parties stipu-

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. . . . The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (b). UNIFORM MARRIAGE AND DIVORCE ACT § 307 (Supp. 1977).

Section 307 of the Uniform Act was amended in 1973, after the Illinois Act was adopted. UNIFORM MARRIAGE AND DIVORCE ACT § 307 (1979), Alternative A and Alternative B. Alternative A reflects the principle that all property, regardless of how or when it was acquired, should be considered part of the marital estate and thus subject to distribution. Alternative B reflects the position of community property states which prefer to distinguish between community and separate property. UNIFORM MARRIAGE AND DIVORCE ACT § 307, 1973 Commissioner's Comment (1979).

Controversy often arises as to when property is "acquired" for the purposes of classification. See generally *In re Marriage of Lee*, 88 Ill. App. 3d 1044, 410 N.E.2d 1183 (1980) (contribution of marital property to nonmarital property transmutes the whole to marital property); *In re Marriage of Crouch*, 88 Ill. App. 3d 426, 410 N.E.2d 580 (1980) (though small amount of marital funds paid for property, it was deemed to have been acquired before marriage and was nonmarital property); *Davis v. Davis*, 544 S.W.2d 259 (Mo. App. 1976) (payment of purchase price after marriage does not alter status of nonmarital property); *Stark v. Stark*, 539 S.W.2d 779 (Mo. App. 1976) (nonmarital property does not become marital property simply because other spouse joins in mortgage); *Cain v. Cain*, 536 S.W.2d 866 (Mo. App. 1976) (property is acquired before purchase price is paid).

4. "In a proceeding for dissolution of marriage . . . the court shall assign each spouse's non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions . . . ." ILL. REV. STAT. ch. 40, § 503(c) (1979).

5. The statute lists ten factors to be considered by a court when dividing marital property, including:

- (1) the contribution or dissipation of each party in the acquisition, preservation, or depreciation or appreciation in value, of the marital and non-marital property, including the contribution of a spouse as a homemaker or to the family unit;
- (2) the value of the property set apart to each spouse;
- (3) the duration of the marriage;
- (4) the relevant economic circumstances of each spouse when the division of property is to become effective . . . .

*Id.*

6. 84 Ill. 2d 89, 417 N.E.2d 1305 (1981).

7. *Id.* at 91, 417 N.E.2d at 1306.

lated that the appreciation in value of the land in dispute was due to external economic factors and not to contributions by the parties.<sup>8</sup> The Illinois Appellate Court for the Fourth District had found that the applicable statute listed only six methods of acquiring property that rendered such property nonmarital or separate property of the spouse acquiring it.<sup>9</sup> The court noted that the statute expressly excepted the appreciation in value of property acquired before marriage from treatment as marital property. Since no such exception was made in the statute for the increase in value of nonmarital property acquired during the marriage, the court applied the maxim *expressio unius est exclusio alterius*<sup>10</sup> and held the increase in value of the husband's land was marital property.<sup>11</sup>

The Illinois Supreme Court reversed the appellate court, however, and determined that the rule of construction upon which the lower court relied had no application in *Komnick*.<sup>12</sup> In holding that the appreciation in value of nonmarital wealth acquired during the marriage was nonmarital property, the court felt that its decision was more consistent with the purpose of the property distribution legislation. The court stated that a rule of construction should not be applied if to do so would be contrary to clear legislative intent.<sup>13</sup>

The court set forth its perception of the underlying purposes of the property distribution legislation to support its conclusion. Noting that the Illinois Marriage and Dissolution of Marriage Act was drawn from the Uniform Act, wherein the marriage is regarded as a shared enterprise or partnership agreement,<sup>14</sup> the court concluded that distribution of assets should be based on the contributions of each spouse to the marital relationship and

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8. *Id.* at 82, 417 N.E.2d at 1307.

9. *In re Marriage of Komnick*, 78 Ill. App. 3d 599, 397 N.E.2d 886 (1979). See ILL. REV. STAT. ch. 40, § 503(a) (1979).

10. "Expression of one thing is the exclusion of another." BLACK'S LAW DICTIONARY 521 (5th ed. 1979). This maxim is a rule of construction which provides that when a statutory provision applies in specified circumstances, that application is excluded in all other circumstances. 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 47.23 (1973) [hereinafter cited as SUTHERLAND].

11. 78 Ill. App. 3d 599, 397 N.E.2d 886 (1979).

12. 84 Ill. 2d at 95, 417 N.E.2d at 1308.

13. *Id.* See also SUTHERLAND, *supra* note 10, at §§ 57.01--57.10.

14. The Illinois system of property distribution was derived primarily from the Uniform Act as amended in 1971. ILL. ANN. STAT. ch. 40, § 503, Historical and Practice Notes (Smith-Hurd 1980). See Auerbach, *Property Considerations upon Dissolution and Declaration of Invalidity*, II ILLINOIS FAMILY LAW 8c-14 (Ill. Inst. Cont. Leg. Ed. 1978) [hereinafter cited as Auerbach]; Heyman, *supra* note 1, at 10.

the accumulation of assets.<sup>15</sup> From this analysis, the court reasoned that to allow the wife to share in the appreciation of nonmarital wealth acquired subsequent to the marriage, for which she claimed to have made no contribution at all, would be contrary to the principle of equitable distribution.<sup>16</sup>

As further support for its holding, the court examined the construction given to a similar Missouri statute in *Hull v. Hull*.<sup>17</sup> In *Hull*, the Missouri court focused on its conviction that once property was characterized as either marital or nonmarital, it was not subject to any subclassification as partly marital and partly nonmarital, regardless of changes in value. As a result, changes in value of nonmarital property follow the classification of the underlying property and are thereafter not subject to division.<sup>18</sup>

The Illinois Supreme Court held that the change in value of nonmarital property acquired during the marriage is classified as nonmarital property.<sup>19</sup> Unlike the Missouri decision, however, the court limited its holding by recognizing that circumstances may exist "which would entitle the other [non-owning] spouse to share in the appreciation" of nonmarital property.<sup>20</sup> The court implied that in two situations the non-owning spouse may receive some benefit from the increase in value of nonmarital property: where the non-owning spouse demonstrates some contribution on his or her part that resulted in the

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15. 84 Ill. 2d at 94, 417 N.E.2d at 1308. See also Auerbach, *supra* note 14, at 8c-14.

Though a system of marital property is not identical to a community property system, there are similarities which may aid in understanding certain concepts. In community property law, property which belongs to the community is that which is acquired after the marriage by "onerous," rather than "lucrative," title. Property acquired during the marriage through joint labor or industry, or for valuable consideration, is acquired by onerous title and belongs to the community. If the property is acquired by one spouse through gift or inheritance, and is intended by the donor to belong to only one spouse, it is said to be acquired lucratively and is separate property. W. DE FUNIAK & M. VAUGHN, *PRINCIPLES OF COMMUNITY PROPERTY* § 62 (2d ed. 1971). Thus, in community property law, the spouses do not share property for which no marital resource was expended regardless of when required. In the Illinois marital property system, marital and nonmarital property are analogous to property acquired by onerous and lucrative title respectively.

16. 84 Ill. 2d at 95, 417 N.E.2d at 1308.

17. 591 S.W.2d 376 (Mo. App. 1979). The pertinent Missouri statute is MO. REV. STAT. § 452.330(2) (Supp. 1979). The basic difference between the Missouri and the Illinois statutes is that the Missouri courts may consider marital misconduct in the distribution of property. This difference is irrelevant to the issue in *Komnick*.

18. *In re Marriage of Komnick*, 84 Ill. 2d at 96, 417 N.E.2d at 1309. See *Hull v. Hull*, 591 S.W.2d 376, 381 (Mo. App. 1979).

19. 84 Ill. 2d 89, 417 N.E.2d 1305 (1981).

20. *Id.* at 96-97, 417 N.E.2d at 1309.

appreciation; or, where the owner-spouse has improved the property through the use of marital resources. In either case, the distribution of the marital property could be adjusted to reflect such contributions. The appreciation of the nonmarital property would be classified as nonmarital, but the non-owning spouse would be compensated by receiving a greater share of marital assets.<sup>21</sup>

A review of Illinois case law reveals that *Komnick* is the Illinois Supreme Court's first attempt to address the issue in controversy. In *Bentley v. Bentley*,<sup>22</sup> decided on the same day as *Komnick*, the court again stated that it did not believe that the legislature intended the appreciation in value of nonmarital property acquired during the marriage to become marital property. This was based on the observation that to divide an increase in value might necessitate the division or disposal of the entire item of property. Such a result would contravene the express directive of the Act to "assign" nonmarital property and to "divide" marital property.<sup>23</sup> Though the entire value of the nonmarital property is to belong to its owner, the court must consider this value in dividing the marital property and in determining whether a maintenance award is appropriate.<sup>24</sup>

Several Illinois appellate court cases have suggested alternative solutions to the *Komnick* problem. Some cases have indicated that the increase in value of nonmarital property acquired after the marriage should be considered marital property, citing the *Komnick* appellate court decision as authority.<sup>25</sup>

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21. *Id.* See ILL. REV. STAT. ch. 40, § 503(c)(1) (1979).

22. 84 Ill. 2d 97, 417 N.E.2d 1309 (1981).

23. *Id.* at 101, 417 N.E.2d at 1311.

24. *Id.* This case was vacated in part because the appellate court did not consider the value of the nonmarital property in determining the amount and period of maintenance. Maintenance under the new Illinois Act replaces the concept of alimony under the former Act. See ILL. REV. STAT. ch. 40, §§ 18-19 (1975). Alimony was awarded as a means to support a dependent spouse after the dissolution, usually consisting of periodic payments by the spouse with the greater amount of personal assets to the other spouse. Alimony awards contained enforcement difficulties, so the legislators in the new Act sought to award such payments only if the recipient "lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs . . ." ILL. REV. STAT. ch. 40, § 504(a) (1979). See ILL. ANN. STAT. ch. 40, § 503, Historical and Practice Notes (Smith-Hurd 1980).

25. *In re Marriage of Smith*, 90 Ill. App. 3d 168, 172, 412 N.E.2d 985, 989 (1980) (spouse not entitled to refunds of payments on house in proportion to investment of nonmarital funds as this would give the spouse the increase in value as well); *In re Marriage of Scott*, 85 Ill. App. 3d 773, 776, 407 N.E.2d 1045, 1049 (1980) (stock shares acquired through stock splits not an increase in value and therefore not marital property); *In re Marriage of Preston*, 81 Ill. App. 3d 672, 680, 402 N.E.2d 332, 338 (1980) (increase in value and therefore not marital property); *In re Marriage of Preston*, 81 Ill. App.

The first district appellate court, however, in *In re Marriage of Thornton*,<sup>26</sup> reached the same conclusion as the supreme court when faced with the issue.<sup>27</sup> That court also examined the legislative purpose in adopting a scheme of equitable distribution. The *Thornton* court noted the goal of awarding economic credit, in the distribution of property, for contributions of a spouse to the acquisition of property during the marriage.<sup>28</sup> Such contributions are what justify classification of property as marital. Therefore, to construe the statute so that the original value of nonmarital property acquired during the marriage is assigned to the owner-spouse, while the increase in value is divisible as marital property, would result in an inconsistency. The appreciation in value of nonmarital property acquired before the marriage would be treated differently from that of nonmarital property acquired during the marriage,<sup>29</sup> whether any contribution occurred or not. The *Thornton* court saw "no logic or policy to support such a result."<sup>30</sup> It refused to apply the maxim of *expressio unius est exclusio alterius* to hold the value increase to be marital property, because the maxim should never be used to defeat legislative purpose or intent.<sup>31</sup>

Aside from decisions of its own courts, Illinois may be aided in construing a statute by looking to other jurisdictions having similar statutes.<sup>32</sup> At least four other states have enacted similar property distribution legislation. These enactments are also

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3d 672, 680, 402 N.E.2d 332, 338 (1980) (increase in value of home after marriage is marital property). See generally Auerbach, *supra* note 14, at 8c-32; Krauskopf, *Marital Property*, *supra* note 1, at 185.

26. 89 Ill. App. 3d 1078, 412 N.E.2d 1336 (1980).

27. *Id.*

28. *Id.* at 1084, 412 N.E.2d at 1341. See *Kujawinski v. Kujawinski*, 71 Ill. 2d 563, 576, 376 N.E.2d 1382, 1388 (1978). In *Kujawinski*, the Illinois Act was held constitutional in the face of due process and equal protection attacks. Since the operation of the terms classifying property does not occur until the dissolution of the marriage, it is not a deprivation of property even when the Act is applied retrospectively to petitions for dissolution filed before the effective date of the Act. *Id.* at 575, 376 N.E.2d at 1388.

29. 89 Ill. App. 3d at 1084-85, 412 N.E.2d at 1341-42. The court found that the application of *expressio unius est exclusio alterius* would produce those different inconsistent results mentioned.

30. *Id.*

31. *Id.* *Accord*, *Dick v. Roberts*, 8 Ill. 2d 215, 218, 133 N.E.2d 305, 308 (1956).

32. "When Illinois enacts a statute adopted in other States and which has received constructions by the courts of those States, Illinois may look to those constructions." *In re Marriage of Stallings*, 75 Ill. App. 3d 96, 99, 393 N.E.2d 1065, 1067 (1979). See also *Cook v. Dove*, 32 Ill. 2d 109, 203 N.E.2d 892 (1965) (construction of inheritance tax statute).

substantially derived from the original Uniform Marriage and Divorce Act.<sup>33</sup>

In Missouri, courts have determined that their statutory scheme for the distribution of property upon dissolution does not contemplate the consideration of assets as partially marital and partially nonmarital.<sup>34</sup> A spouse may ultimately be compensated for value increases in nonmarital property by receiving a greater share of the marital assets, if marital assets contributed to the increase. Where economic forces alone were responsible for the appreciation though, the non-owning spouse is not entitled to any benefits derived from such appreciation.<sup>35</sup>

One court reached a different result when it redefined what constitutes contributions to the increase in value of property. In *In re Marriage of Wildin*,<sup>36</sup> the Colorado Court of Appeals found that the Colorado statute mandates that increases in value of nonmarital property are marital property and subject to distribution.<sup>37</sup> In *Wildin*, the increase in value of the property ac-

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33. These states include: Colorado, COLO. REV. STAT. § 14-10-113 (1973); Kentucky, KY. REV. STAT. ANN. § 403, 190 (Baldwin Supp. 1980); Maine, ME. REV. STAT. ANN. tit. 19, § 722-A (Supp. 1979); and Missouri, MO. REV. STAT. § 452.330 (Supp. 1979).

34. *Hull v. Hull*, 591 S.W.2d 376, 381 (Mo. App. 1979). See *Davis v. Davis*, 544 S.W.2d 259, 264 (Mo. App. 1976); *Stark v. Stark*, 539 S.W.2d 779, 783 (Mo. App. 1976); *Cain v. Cain*, 536 S.W.2d 866 (Mo. App. 1976); *Conrad v. Bowers*, 533 S.W.2d 614, 624 (Mo. App. 1975). See *supra* note 3 and accompanying text.

35. *Hull v. Hull*, 591 S.W.2d at 381. A single item of property may have aspects of both marital and nonmarital property, according to the Supreme Judicial Court of Maine. *Tibbetts v. Tibbetts*, 406 A.2d 70, 75 (Me. 1979). The Maine statute was also based on the Uniform Act and thus on the partnership theory of marriage. The marital estate is entitled to reimbursement for that increase in value of nonmarital property which could be traced to the investment of marital funds. *Id.* at 77. The Maine court did not say whether the marital estate should be augmented by value increases that were not due to the investment of marital funds, but the result would be consistent with the court's interpretation of legislative purpose if such increases were not divisible as marital property. The court recognized that equitable distribution may also be accomplished by awarding a non-owning spouse a proportionately higher share of the marital estate to offset the assignment of valuable nonmarital property to its owner where some contribution of marital funds has been made. *Id.* at 78.

This "contribution" approach to the distribution of assets, including the increase in value during marriage of nonmarital property, has been accepted in Kentucky as well. Where the increase in value of nonmarital property is traceable to improvements made by the spouses, such increase is subject to distribution as marital property. *Angel v. Angel*, 562 S.W.2d 661, 665 (Ky. App. 1978). Kentucky courts have not yet decided whether value increases in nonmarital property due to external economic factors are to be considered as marital or nonmarital property.

36. 39 Colo. App. 189, 563 P.2d 384 (1977).

37. 39 Colo. App. at 191, 563 P.2d at 386. In this respect, the Colorado and Illinois statutes differ:

(4) An asset of a spouse acquired prior to the marriage or in accordance with subsection (2)(a) or (2)(b) of this section shall be considered as marital property, for purposes of this article only, to the extent



quired during the marriage (stocks) was found to be due primarily to external factors (inflation).<sup>38</sup> Even so, the appellate court noted that contribution to the value increase could have been found because the "conservation of the principal of an estate is, in itself, a valuable contribution which should be considered" in the distribution of assets at dissolution.<sup>39</sup>

Presumably, the parties could have mismanaged or even sold the stocks. Since the original value of the stocks, and the gains in value of these stocks, remained part of the estate, the court reasoned that some effort must have been involved to produce this result. For this reason, the court said that contribution had occurred.<sup>40</sup> Because this contribution did exist, holding the property to be marital was justified, even in the absence of a specific statutory provision.

While these conflicting cases from other jurisdictions are hardly conclusive as to the proper result in a case like *Komnick*, they do tend to support Illinois' finding regarding the purposes underlying the property distribution statute. The states considering the point agree that the legislative intent in each case is to provide a workable means to distribute property fairly upon the termination of marriage. The *Komnick* court found that the intent of the Illinois legislature in adopting its version of the Uniform Act is indeed to provide for the distribution of property at dissolution in proportion to contribution, as in a partnership or joint enterprise.<sup>41</sup> In this light, the classification as nonmarital of the appreciation of nonmarital property acquired subsequent to the marriage, when such a value increase is due solely to economic forces, follows logically despite the absence of such a requirement in the statute. The court's conclusion in *Komnick* was, therefore, correct under the facts of that case.

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that its present value exceeds its value at the time of the marriage or at the time of acquisition if acquired after the marriage.

COLO. REV. STAT. § 14-10-113(4) (1973). The Illinois statute has no such comparable provision.

38. 39 Colo. App. at 191, 563 P.2d at 386.

39. *Id.* It is conceivable that the Illinois Supreme Court could have followed the *Wildin* court, finding the conservation of assets as a valuable contribution to the increase in value. The Illinois statute provides for the consideration of the contributions of each party in the preservation of nonmarital property as a relevant factor in the distribution of marital property. ILL. REV. STAT. ch. 40, § 503(c)(1) (1979). The court was not able to consider any form of contribution though, because the parties in *Komnick* stipulated that the appreciation in value of the land was not the result of any contribution.

40. 39 Colo. App. at 191, 563 P.2d at 386.

41. 84 Ill. 2d at 94, 417 N.E.2d at 1308. See generally Auerbach, *supra* note 14, at 8c-14; Heyman, *supra* note 1, at 8, 10; Casenote, *Kujawinski v. Kujawinski*, S. ILL. U.L.J. 598, 601 (1978); ILL. ANN. STAT. ch. 40, § 503 Historical and Practice Notes (Smith-Hurd 1980).

To ascertain the legislative intent in enacting section 503 of the Illinois Marriage and Dissolution of Marriage Act, the court should read the entire section as a whole to give effect to all parts of the statute. Legislative intent may be implied not only from the language used, but also on the basis of policy and reasonableness.<sup>42</sup> The statute provides for the consideration of contributions of either spouse to the "acquisition, preservation, or depreciation or appreciation in value of the marital and nonmarital property" in the distribution of marital property.<sup>43</sup> This indicates that the legislature intended partnership notions to apply.<sup>44</sup> Courts have the power to do equity in the distribution of assets when the facts warrant such action.<sup>45</sup> Where there is some investment of marital resources in the acquisition of property during the marriage, including contributions to the appreciation of nonmarital property, it would be equitable for a court to award economic credit in proportion to the contribution. This would be accomplished by adjusting the relative awards of marital property. Where there is no demonstrable contribution, and the increase in value of nonmarital property is the result of inflation, no principle of equity is served by dividing such property between the spouses.

The legislature expressly stated only six methods of acquiring property which would render such property nonmarital.<sup>46</sup> The legislature could have provided that the increase in value of nonmarital property acquired during the marriage is also nonmarital property.<sup>47</sup> The absence of such a provision does not necessarily mandate the application of *expressio unius est exclusio alterius*.<sup>48</sup> The use of this rule of construction requires great caution. "Where an expanded interpretation [of a statute] will accomplish beneficial results . . . the maxim will be disregarded and an expanded meaning given."<sup>49</sup>

In *Komnick*, an expanded interpretation of section 503(a) to include the appreciation of nonmarital property acquired during the marriage results in a more equitable distribution of the marital assets. It is difficult to see why the wife in *Komnick* should be entitled to share in the appreciation of her husband's land when no marital resources or energies were expended to bring about the appreciation. No distinction should be made in this

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42. SUTHERLAND, *supra* note 10, at §§ 57.02--57.03.

43. ILL. REV. STAT. ch. 40, § 503(c)(1) (1979).

44. Auerbach, *supra* note 14, at 8c-64.

45. *Id.* at 8c-12; Heyman, *supra* note 1, at 26.

46. ILL. REV. STAT. ch. 40, § 503(a) (1979).

47. *In re Marriage of Komnick*, 78 Ill. App. 3d at 602, 397 N.E.2d at 888.

48. *Dick v. Roberts*, 8 Ill. 2d at 219, 133 N.E.2d at 308.

49. SUTHERLAND, *supra* note 10, at §§ 47.25, 57.04.

case simply because the land was acquired during, rather than before, the marriage. No rationale exists to justify treating the appreciation of nonmarital property differently, based on when the property was acquired, when nothing of the marriage was contributed to cause the increase.<sup>50</sup>

*Komnick* dealt with an extremely narrow issue and, consequently, its holding should be restricted to similar facts. Where an increase in value of nonmarital property is due solely to external economic factors, such increase is also nonmarital property.<sup>51</sup> The court was careful to point out that circumstances may exist, or some contribution may be demonstrated, which would entitle the non-owning spouse to share in the appreciation. This could be accomplished by adjusting the proportion of marital property awarded to that spouse to reflect any such contribution.<sup>52</sup>

Both parties in *Komnick* stipulated that the appreciation in value of the land was due only to external economic factors. Perhaps if they had not so stipulated, the court might have found that some marital contribution had in fact been made that was at least partly responsible for the value increase. The Illinois court may find contribution in unlikely situations, as did the Colorado court.<sup>53</sup> This indicates the possible error in the stipulation made in *Komnick*, but does not detract from the correctness of the court's decision.

Upon the dissolution of marriage, a court has discretion to award unequal shares of marital assets to each spouse. To equitably divide these assets the court considers the nonmarital property assigned to each and the relative economic positions of the spouses after distribution.<sup>54</sup> Economic efficiency and fairness is also served when a spouse owning non-divisible,

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50. *In re Marriage of Thornton*, 89 Ill. App. 3d at 1084-85, 412 N.E.2d at 1342.

51. 84 Ill. 2d at 96, 417 N.E.2d at 1309.

52. Such an adjustment in the proportion of marital property awarded is preferable to considering the value increase as marital property. First, consistency will result if nonmarital property acquired during the marriage is afforded the same treatment as nonmarital property acquired before the marriage. See *supra* notes 27-29 and accompanying text. Also, marital property is to be divided. If increases in value of nonmarital property are considered marital property, division of the asset might require the disposal of the asset in order to distribute shares. See *supra* notes 22-23 and accompanying text. If the underlying asset is the nonmarital property of one spouse, that spouse should be able to feel secure in the ownership and should not have to forfeit that security if other means of satisfying shares are available in the distribution of marital assets.

53. *In re Marriage of Wildin*, 39 Colo. App. 189, 563 P.2d 384 (1977).

54. A maintenance award is also available if there are insufficient marital assets to fully compensate a spouse for contributions to value increases in nonmarital property. ILL. REV. STAT. ch. 40, § 504(a) (1979).

nonmarital property is not required to sell that property and divide the proceeds to give the other a share.

In the future, when Illinois couples terminate their marriages, they will be guided in distributing their property by the supreme court's logic. The *Komnick* decision is sound interpretation based on the purpose of the Illinois Act and promotes the legislative intent embodied therein. The property distribution section of the Illinois Act vests the court with discretion in distributing marital property. If the *Komnick* decision works considerable hardship in other fact situations, the court may take appropriate steps to alleviate the problem. In the limited situation presented in *Komnick*, however, no other decision would produce as equitable a result.

*Ruth Miller*

