

Deviations From A 50/50 Split of Marital Assets in Equitable Distribution

by Ronald R. Tweel and Elizabeth P. Coughter



Representing a client in an equitable distribution case presents the practitioner with many legal and factual problems, not the least of which is when one can advise a client with some degree of assurance that the court may distribute all or a particular portion of the marital assets on an unequal basis. Making such pronouncements to a client can be risky, but if there is existing case law to support your proposition, then with the appropriate caveats, recommendations of unequal division can be made. Further, knowledge of the case law cited in this article is often critical during negotiations—either to convince the opposing counsel, or to assist him or her to convince the opponent, that an unequal division is likely, and/or supported by Virginia case law.

There are significant published and unpublished cases—for easy reference, with supporting rationale, showing when to negotiate or litigate an equitable distribution case. We have tried to set forth these cases in categories. We will try to discuss in detail the leading cases for each category and then provide the reader with a brief summary of other supporting cases. This is intended to provide a framework for an overview of the logic of the court of appeals and a research tool for those who do not specialize in the field of family law.

First, a word of caution. We practice primarily in central Virginia, and a particular case may never result in an unequal division of marital property in one jurisdiction, while the argument may fare

considerably better in another. The old legal maxim “know your judge” is more significant in this particular area of family law (or any area of law) than practically any other. Our experience has shown us that some judges will not vary from a 50/50 division regardless of the facts or the law. Other judges have particular biases about special assets that most often result in an unequal division of marital property.

One final matter before we begin our substantive analysis—your credibility with the courts and opposing counsel will be enhanced if one does not always “cry wolf” in every case, i.e., argue that every case should be an unequal division in favor of your client because . . . (fill in the blank). This approach does a disservice to those clients who do deserve an unequal award. In other words “pick your shots,” and be firm when you do.

Background

Of course, the first place that the experienced practitioner looks is the statute. (It is amazing how many people fail to do this.) Not all criteria contained in Va. Code Ann. §20-107.3(E) are terribly important for the purpose of obtaining a deviation from a 50/50 division of marital property, but a brief review of the more pertinent factors seems to be in order. These are:

1. The contributions, monetary and non-monetary, of each party to the well-being of the family;
2. The contributions, monetary and non-monetary, of each party in the acquisition and care and maintenance of such marital property of the parties; . . .
5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivisions (1), (3) or (6) of § 20-91 or § 20-95;
6. How and when specific items of such marital property were acquired; and . . .
10. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

We are not implying that the other factors may not be decisive in a particular case, but the ones cited above are the sections most frequently cited and used in order to arrive at an unequal

division. One should never forgo creativity and imagination when it comes to the practice of law, but this article is geared to what has been successful to this point in time with trial courts and our court of appeals.

We will set forth here the basic areas where an unequal division has been successful and the remainder of this article will expound on these areas:

1. Division of pensions;
2. Division of marital residences;
3. Division of closely held businesses;
4. Divorce based upon fault or negative contributions to well-being of family; and
5. Untraceable separate property of a spouse.

General Principles

It is quite clear in Virginia that there is no statutory presumption of an equal distribution of the marital assets of the spouses in a divorce. *Papuchis v. Papuchis*, 2 Va. App. 130, 341 S.E.2d 829 (1986). The court of appeals held that the General Assembly had not adopted a statutory presumption of equal distribution. It found that such a presumption “would undermine the legislature’s recognition of ‘marriage as a partnership to which each party, contributes, albeit not always equally, to the well being of the family unit.’ *Id.* at 132.”

Two years later, the court of appeals spoke of equality and tolerated inequality in *Pommerenke v. Pommerenke*, 7 Va. App. 241, 372 S.E.2d 630 (1988). In *Pommerenke* the wife had committed adultery and the marital assets were divided 50/50 with the notable exception that the equity in the marital home which was jointly owned was primarily awarded to Mr. Pommerenke who contributed a large sum of his premarital savings to the down payment. The wife had argued that she was being punished for her adultery when she was not awarded a larger share of the marital home. The court of appeals, however, found that “in the context of a marital partnership, an initial assumption of equality is reasonable” in establishing the beginning point for an equitable distribution award. *Id.* at 250. The trial court was affirmed on appeal in making its equal division of the marital property with the exception of the marital home division, which the court of appeals found to be well within the sound discretion of the trial court.

In *Marion v. Marion*, 11 Va. App. 659, 401 S.E.2d 432 (1991), the court of appeals affirmed its opinions of *Papuchis* and *Pommerenke*. It held that an assumption of equality in dividing marital assets does not rise to the level of a presumption, and once again confirmed that equitable distribution does not mean equal distribution. *Id.* at 663. In *Marion*, the husband owned a veterinarian practice and had engaged in an adulterous affair with his sister-in-law. The wife contended that under circumstances where the husband had contributed only financially to the family and not otherwise during the latter part of their marriage, she

should have been awarded more than 50% of the marital assets. The court of appeals held that adultery and other reasons for the dissolution of the marriage constitute only one of several factors that the court must consider when balancing the equities of the parties in fashioning an equitable distribution award. “Circumstances that lead to the dissolution of the marriage, but have no effect upon marital property or its value are not relevant to determining a monetary award and need not be considered.” *Id.* at 664.

The court of appeals has also ruled that it is appropriate to consider the parties’ unequal contributions towards the acquisition of any individual marital asset. *Artis v. Artis*, 10 Va. App. 356, 362, 392 S.E.2d 504, 507 (1990). In *Artis*, the trial court awarded 15% of the husband’s military pension to the wife. The parties had stipulated that they had contributed equally to the acquisition of marital property. The appellate court ruled that on remand, the trial court must state its reasons in the record for an unequal division of the husband’s pension giving appropriate consideration to the parties’ stipulation of their equal contribution.

There is a multitude of cases that confirm that the courts of Virginia do not have to specify the weight given to any specific statutory factor and that confirm that the trial court has broad discretion in fashioning an award. (Swisher, *Virginia Family Law* (2nd Ed. 1997) §11-28, n.1.) Most cases do favor the wage earner in the award of a pension. *Id.* at n.7. There is also a multitude of cases regarding the unequal division of the marital residence. *Id.* at n.8.

Pensions

Cases are legion in Virginia wherein the trial courts have varied considerably from an equal split of a pension. There are even cases where the trial court has completely denied the non-participant spouse any of the pension benefits. Many of the cases have divided the pension on a 75/25 basis while others have divided it on a 60/40 basis. There are many common themes running through these cases.

It is quite clear in Virginia that there is no statutory presumption of an equal distribution of the marital assets of the spouses in a divorce.

It must be remembered that the statutory language does not mandate a division, but states specifically that the trial court “may direct payment of a percentage of the marital share of any pension . . . or retirement benefits . . .” (Va. Code Ann. §20-107.3(G).) The court in *Brunelle v. Brunelle*, 1995 Va. App. LEXIS 49, considered all the statutory factors and decided that the wife was not obligated to have any portion of her pension awarded to the husband. *See also, Rose v. Rose*, 1994 Va. App. LEXIS 741, wherein the wife received none of the husband’s pension. The

court recognized that retirement and pension plans, by their nature and diversity, present unique problems in a division of marital wealth, and the task of the trial court in making an equitable distribution of such benefit is not an easy one, citing *Banagan v. Banagan*, 17 Va. App. 321, 437 S.E.2d 229 (1993). Both of these cases clearly show that the court of appeals will uphold decisions by the trial court that it is permissible not to award any of the retirement benefits to the non-participant spouse if all of the factors under Va. Code Ann. §20-107.3(E) have been considered.

One of the themes in the series of published and unpublished cases from our court of appeals is that the pension recipient received considerably more than 50% of the pension because of the vast disparity in the financial contributions to the well-being of the family and to the specific pension in question. *Zipf v. Zipf*, 8 Va. App. 387, 382 S.E.2d 263 (1989). Mr. Zipf had attended the Naval Academy and graduated prior to the marriage. In discussing the wife's contribution to the husband's naval career, the *Zipf* Court found the husband completing four years of the Naval Academy before the couple's marriage a significant factor. The trial court further found that the wife was not left alone with the family and did not have to move from various places because of her husband's career. The trial judge further determined that they had lived together throughout at least 90% of the marriage and had shared the family responsibilities. Finally, in order to support its 75/25% division of the military pension, the Court said that the husband's Naval Academy training was a primary factor which established the marital standard of living, rather than the non-monetary contributions of the wife.

There are several published and unpublished opinions from the Court of Appeals which further this line of reasoning about an unequal division of pensions resulting from one spouse making a substantial amount of monetary contributions to the well-being of the family and the acquisition of the pension or retirement plan.

1. *Sawyer v. Sawyer*, 1 Va. App. 75, 335 S.E.2d 277 (1985) (61/39 division);
2. *McLaughlin v. McLaughlin*, 2 Va. App. 463, 346 S.E.2d 535 (1986) (60/40 division);
3. *Mitchell v. Mitchell*, 4 Va. App. 113, 355 S.E.2d 18 (1987) (66/34 division);
4. *Aster v. Gross*, 7 Va. App. 1, 371 S.E.2d 833 (1988) (80/20 division);
5. *Seeborn v. Seeborn*, 7 Va. App. 735, 375 S.E.2d 7 (1988) (60/40 division);
6. *Holmes v. Holmes*, 7 Va. App. 472, 375 S.E.2d 387 (1988) (60/40 division);
7. *Crummett v. Crummett*, 1994 Va. App. LEXIS 704 (60/40 split when almost all of the financial contributions of the marriage had been made by the husband);
8. *McDavid v. McDavid*, 19 Va. App. 406, 451 S.E.2d 713 (1995) (60/40 division);
9. *Snyder v. Snyder*, 1995 Va. App. LEXIS 523 (wife awarded 30% of the husband's state government pension in light of the husband's substantial monetary contributions to the marriage);
10. *Ferris v. Ferris*, 1996 Va. App. LEXIS 166. (the wife was awarded absolutely nothing from the husband's 401(k) retirement when the husband had made most of the money for the family during the marriage and made contributions to the marriage of some of his separate property);
11. *Hendrick v. Hendrick*, 1996 Va. App. LEXIS 181. (the court divided the pension on a 62/38 basis favoring husband who was already retired and had shorter life expectancy); and
12. *Brumskill v. Brumskill*, 1997 Va. App. LEXIS 511. (The 75/25 division was supported by facts held that the entire pension had come from the husband; the husband had commuted over 100 miles to work for a long period of time, and it was a long-term marriage of more than 25 years).

Recent cases that have followed the trends noted above include *Asgari v. Asgari* 33, Va. App. 393, 533 SE2d 393 (2000), which approved the unequal division of a pension asset. An unequal award of the husband's disability retirement was affirmed on appeal. The parties had been married 13 years and both were gainfully employed and financially independent at the time of the marriage. All of their earnings were jointly deposited into joint accounts. At trial, the marital residence was split 50/50. However, the wife was awarded only 40% of the husband's disability retirement. The disability constituted a retirement benefit and had been earned by the husband during the term of the marriage. The disproportionate share was apparently proper due to the fact that the husband was the wage earner who accumulated the pension.

A similar rationale appears in *Beck v. Beck*, Ct. App. No. 1082-99-2, unpublished, September 19, 2000. The trial court was affirmed on appeal of its unequal divisions of the pension and the marital residence by reason of the unequal separate contributions of the parties. This marriage was short-term (6 years) with two young children. The husband had been accused of adultery. Two-thirds of the marital assets were awarded to wife and one-third to the husband. Wife also was able to establish that she contributed 71.3% from her separate funds to the acquisition of the marital residence, while husband contributed 18.2%. Each of the parties had 401(k) plans which were marital and the parties were allowed to retain their own retirement plans with the husband's being roughly twice as large as the wife's. The court of appeals held that the trial court properly determined that the individual efforts in accumulating the pensions justified the parties receiving separately the major portions of their own respective pensions. The equitable distribution award was affirmed on appeal, while the spousal support award was reversed and remanded.

It is apparent from a review of these cases that the court will often award a greater share of the pension to the wage earner in whose name the pension had accrued. The monetary contributions of the wage earner are the primary factors to consider in the division of pensions.

Division of Marital Residences

Another factor that enhances a spouse's equitable distribution award is successful tracing of separate assets into the acquisition of marital property. Successful tracing of a down payment for the purchase of a marital residence which is characterized as a marital asset, may result in an unequal award of that asset. *Rowe v. Rowe*, 24 Va. App. 123, 480 S.E.2d 760 (1997); *Holden v. Holden*, 31 Va. App. 24, 520 S.E.2d 842 (1999); *Pembelton v. Pembelton*, 1996 Va. App. LEXIS 771.

Another factor that will result in the unequal division of a marital residence is the success or failure of one party in proving the contribution of marital property or significant personal efforts to the increase in value of a separate asset. In *Martin v. Martin*, 27 Va. App. 745, 501 S.E.2d 450 (1998), the wife was unable to prove that her business acumen in selecting the marital residence, which was purchased primarily with husband's separate assets, and her efforts at painting, wallpapering and carpet installation in the residence were significant personal efforts resulting in a substantial increase in the home's value, which increase should be considered marital. The majority of that asset was awarded to the husband because he successfully retraced his separate financial investment in the property.

Similar arguments prevailed in the cases below that resulted in the unequal division of the marital residence.

1. *Klein v. Klein*, 11 Va. App. 155, 396 S.E.2d 866 (1990) (100% of the marital residence awarded to wife upon evidence of the wife's family making gifts to the couple and the wife having extraordinary medical bills and expenses—i.e., source-of-funds, plus need);
2. *Amburn v. Amburn*, 13 Va. App. 661, 414 S.E.2d 847 (1992) (husband awarded 60% when separate funds were utilized in the purchase of the marital residence);
3. *Crummett v. Crummett*, 1994 Va. App. LEXIS 704 (60% of the residence awarded to the husband in light of wife's less-than-good faith-efforts to market the house);
4. *Rose v. Rose*, 1994 Va. App. LEXIS 741 (60% of the residence awarded to the husband after consideration of all the statutory factors);
5. *Earl v. Earl*, 1995 Va. App. LEXIS 690 (84% of the marital assets awarded to the husband who renovated the home and made greater monetary and non-monetary contributions while the wife deserted the marriage);
6. *Nigh v. Nigh*, 1995 Va. App. LEXIS 830 (100% of the marital residence awarded to wife when husband exposed family to constant borrowing and created a drain against the equity);
7. *Gerwe v. Gerwe*, 1996 Va. App. LEXIS 21 (100% of the marital residence awarded to wife when husband deserted the marriage);

8. *Ferris v. Ferris*, 1996 Va. App. LEXIS 166 (80/20 division in favor of husband of marital assets based upon husband's 97% financial contributions and 61% of non-monetary contributions);

Also instructive is *von Raab v. von Raab*, 26 Va. App. 239, 494 S.E.2d 156 (1997) (husband failed to properly trace his premarital equity in the property or his post-separation reduction in the principal of the mortgage, so award to wife of one-half of the property was affirmed on appeal).

See also *Maxey v. Maxey*, 1997 Va. App. LEXIS 629 (the non-title-owner wife was awarded a 35% share of husband's separate real estate and a 20% share of husband's second parcel of real estate when husband failed to trace his separate interest and wife was able to establish her considerable non-monetary contributions to this "stormy marriage").

When the courts are considering the division of the equity in a marital residence, the factor that is most often considered is once again the successful tracing of greater monetary and/or non-monetary contributions to the acquisition or enhanced value of the family home. The prevailing spouse who wishes to obtain a greater share of this equity will have to meet the burden of proof with documentation and corroborating evidence to confirm his or her greater financial contributions and/or greater personal efforts and labor.

Division of Closely Held Business

One factor that has been considered repeatedly by the courts is the unequal efforts expended by one party towards the acquisition or growth of a family business. In *Marion v. Marion*, 11 Va. App. 659, 401 S.E.2d 432 (1991) (discussed earlier), the veterinarian husband was awarded a larger share of his veterinary practice than the wife based on the fact that it grew in value solely due to the skill and energy invested by the husband.

An important case in which the husband was awarded 56.5% of the family business after unsuccessfully arguing that he should have been awarded a greater share is the *Matthews* decision. Mrs. Matthews had argued that she should have been awarded an equal share of the family business even though she had diminished her role in the business after the parties' children were born. The trial court in that case was persuaded by her argument that the parties had agreed to treat their assets as the fruits of their joint efforts, awarding her a very large share of this lucrative business enterprise.

The parties' "notion of marriage" and joint titling of their properties was an appropriate factor for the Court to consider in awarding the wife \$22.1 million dollars of a \$50.7 million marital estate, despite the greater contributions to the family business by the husband. In *Matthews v. Matthews*, 26 Va. App. 638, 496 S.E.2d 126 (1998), the husband had developed with several business partners a certain statistical approach to commodities trading that was wildly successful. The trial court had noted that the husband had made greater monetary contributions during the second half of the marriage, while the wife had made substantial contributions to the family business in the first half of the mar-

riage, as well as making the greater non-monetary contributions throughout the entire marriage. The husband had unsuccessfully argued that the court could not consider the parties' "notion of marriage" or the joint titling of their assets in fashioning its equitable distribution award. The trial court had found that the evidence supported the view that the parties' "notion of marriage" was an equal sharing of the fruits of their labor regardless of which spouse had generated their family income, and properly refused to grant a greater share of the marital estate to the husband.

Do not, however, ask for too much of the pie. It may be too large for the court of appeals to swallow.

Finally, in *Brown v. Brown*, 1996 Va. App. LEXIS 78, the wife was awarded 55.9% of the marital estate when the husband had inherited an original business and formed a new business during the marriage, which was marital, from that inherited entity. Looking only at the above cases one could say that the proponent for an unequal award of a family business will succeed if there is proof of greater efforts made by the proponent in actually creating and pursuing the business enterprise. This unequal award is particularly likely when the non-employee spouse is active at home or in other efforts and has little to do with the business enterprise.

Divorce Alleging Fault Grounds without Adequate Proof of Fault

Fault grounds are an implied factor for consideration. The leading case regarding fault, which is generally adultery, is *O'Loughlin v. O'Loughlin*, 20 Va. App. 522, 458 S.E.2d 323 (1995). The wife was awarded 60% of the marital estate in that case upon a finding by the trial court that a husband who was guilty of adultery had made negative non-monetary contributions towards the well being of the family. *See*, Va. Code Ann. §20-107.3(E)(1). The court of appeals found that the trial court did not use the adultery to punish the husband. Rather, the trial court properly found that the husband had spent over \$10,000 on his paramour, but specifically stated that it did not consider those expenses a factor due to insufficient evidence to support a finding of dissipation of the marital estate. Rather, the trial court found that the husband's infidelity had a negative impact on the well being of the family. The wife had worked outside the home and made nearly 100% of the non-monetary contributions to the marital partnership. The theory was that the husband's unfaithfulness hindered the wife's efforts to contribute to the partnership in a non-monetary fashion. *O'Loughlin* relied heavily on *Aster v. Gross*, 7 Va. App. 1, 371 S.E.2d 833 (1988), which held that the reasons for the dissolution of the marriage, (Va. Code Ann. §20-107.3(E)(5)) were irrelevant unless they had an economic impact.

Sometimes one suspects a reliance on fault factors disguised by the focus on non-monetary factors. In *Alphin v. Alphin*, 15 Va. App. 395, 424 S.E.2d 572 (1992), the wife was awarded the greater share of the marital assets. The wife's actions in facilitating her husband's career and selecting the family's homes during the course of the 18-year marriage were the primary factors relied upon in awarding her the larger share of the marital assets. The husband argued that the award was overly generous and based on sympathy rather than proper consideration of all of the equitable distribution factors. The court of appeals relied upon the credible evidence regarding the wife's contributions to the marital assets, including "the prudent selections of the various residences and the associated sacrifices of moving from place to place to facilitate her husband's career advancement". (*Id.* at 404.) The wife in that case had been the primary homemaker while the husband had been the primary wage earner. The wife had a high school education, a spotty employment record, and "significant mental health problems". *Id.* at 399. Wife's attempt to amend her grounds of divorce to allege adultery was denied.

The courts are not always clear in stating that fault is a factor. In *Broom v. Broom*, 15 Va. App. 497, 425 S.E.2d 90 (1992), the trial court divided equally the \$1 million in equity in the marital residence and further gave the wife a monetary award of \$100,000. The husband had argued that the trial court had failed to consider equally the contributions of both parties to the marriage. In that case, the husband was the primary wage earner while the wife raised the children. At the time of the hearing the wife had been employed as a banquet manager at a modest income. The parties had been married 16 years, and the husband had admitted that he was guilty of desertion. He sought to be reimbursed \$319,000, a sum that he had contributed above and beyond his employment earnings. On appeal, the trial court was affirmed and held to have properly considered husband's greater financial contributions. All else being equal, was husband's admission of desertion the overriding factor? The opinion does not so state.

Although fault may have no demonstrable effect on the value of the marital estate, fault remains a statutory factor to be considered in distributing it. In *Cornett v. Cornett*, 1994 Va. App. LEXIS 679 (1994), the wife was found guilty of desertion. She had argued on appeal that the uneven distribution of the marital assets demonstrated an improper reliance by the trial court on the finding of her marital fault. The court of appeals found that "nothing in the record suggests that the issue of fault was considered to be an economic factor, only that it was considered *as required by the statute.*" (Original emphasis) *Id.* What on earth does this mean? There is no indication in this unpublished decision as to how disparate the award was. One can perhaps, however, read between the lines the reason for the disparity.

Finally, in a recent case fault appears to be an implied factor. *See Skeens v. Skeens*, Ct. App. No. 1035-00-2, unpublished, October 3, 2000. The trial court was affirmed in its finding that the wife had made 60% of the non-monetary contributions, while the husband had made 40%. The parties had made equal monetary contributions during the term of their 35-year marriage, and 55% of the marital assets were awarded to the wife. This case may have been decided in favor of the wife due to her greater share

of the non-monetary contributions and the husband's willful desertion. See also, *Barnes v. Barnes*, 16 Va. App. 98 (1993) (wife guilty of adultery and awarded 5% of business interest and 35% of marital residence).

In conclusion, it appears that although not always stated as a factor, fault is an arrow not to be left out of one's quiver when aiming for an unequal distribution of marital assets. Despite the fact that the misbehavior of a spouse may have had little or no provable economic impact, it remains a factor that is not to be ignored.

Unsuccessful Tracing of Separate Property

The attempt to trace separate contributions to a marital asset may succeed in producing an unequal award, even though the burden of proving the "separate" nature was insufficient. In *Blanding v. Blanding*, 1999 Va. App. LEXIS 167, the wife was awarded 69% of a brokerage account (31% to the husband). The wife was not able to prove that the brokerage account was her separate asset so the court found it to be marital property. The court clearly considered, however, the wife's separate contributions to the account, since it awarded her the greater portion of this marital asset.

The failure to trace the contribution of marital assets to the acquisition of a separate asset resulted in an unequal division of the husband's separate business enterprise. In *Kelley v. Kelley*, 2000 Va. App. LEXIS 576, the wife was awarded \$9,600 less of the marital assets, as she was unable to provide sufficient evidence to prove that the separate business asset increased in value by a contribution of marital assets. The hybrid separate property included improvements to the real property of the husband's separate business.

Finally, don't get greedy. A request for too disproportionate an award may result in a reversal on appeal.

Also, a spouse's free spending lifestyle does not necessarily warrant a disproportionate award. These two points were illustrated in *Clark v. Clark*, 2000 Va. App. LEXIS 469, where the trial court was reversed on appeal for awarding 85% of the marital estate to the wife. The only factor cited by the trial court was the fact that the monetary contributions of both parties were nearly equal. The trial court failed to give any explanation for the disproportionate division of assets. The Court of Appeals disputed the commissioner's finding that the monetary contributions of the parties to the well being of the family were nearly equal. This 26-year marriage began with the wife's salary being equal to the husband's. By the end of the marriage, however, the parties' incomes were clearly disproportionate. It was inappropriate for the commissioner to consider that the husband spent his money excessively on personal items, such as clothes and expensive automobiles. This conduct did not explain nor justify the disproportionate division of the assets that this trial court arrived at. See also, *McKeel v. McKeel*, 1998 Va. App. LEXIS 215 (award of 86% of marital estate reversed on appeal when trial court failed to justify such an unequal division).

Thus it appears you should always put on your evidence of separate assets or contributions, no matter how meager. Do not, however, ask for too much of the pie. It may be too large for the court of appeals to swallow.

Conclusion

There is no certainty as to which factors weigh most in fashioning an equitable distribution award. Most clearly, a wage earner may well be awarded the greater share of his or her pension. A spouse who can trace separate assets spent in the acquisition of the marital residence or other asset often will be credited such sums. The spouse who creates a successful business enterprise may acquire a greater share of it. Fault appears still to have an impact that is often not specified as a factor. Whatever the factor, the trial court retains broad discretion to fashion an unequal award, provided some basis for the unequal distribution is stated in the court's opinion. ☺



Ronald R. Tweel is a partner in the firm of Michie, Hamlett, Lowry, Rasmussen, and Tweel, in Charlottesville. He has served as Chair of the Family Law Sections of the Virginia State Bar and the Virginia Trial Lawyers Association, and is a fellow in the American Academy of Matrimonial Lawyers.



Elizabeth P. Coughter is a partner in the firm of Michie, Hamlett, Lowry, Rasmussen, and Tweel. She is a graduate of the University of Virginia and the University of Richmond Law School.

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