**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

MARCH 11, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-1538-FT**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT III**

**In re the Marriage of:**

**SUZANNE M. DEE,**

**Petitioner-Respondent,**

**v.**

**HAROLD E. DEE,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Door County: PETER C. DILTZ, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Harold Dee appeals those parts of a divorce judgment dividing the marital property and awarding Suzanne Dee $500 per month maintenance for eighteen months and $250 maintenance for an

additional eighteen months.[1] Harold argues that the trial court erred when it awarded Suzanne 65% of the marital assets in recognition of an inheritance that had been commingled with marital property and that the maintenance award is excessive and unfair. We reject these arguments and affirm the judgment.

The parties were married for fourteen years. During the marriage, both parties worked in California at Lockheed Aircraft, but planned to become Christian Science Practitioners upon Harold's retirement. During the marriage, each spouse received an inheritance that was commingled in marital accounts. Suzanne's inheritance was approximately $100,000 more than Harold's. At the time of the divorce, Harold had retired and his monthly income from pension and social security totaled approximately $1,848. Suzanne, who was forty-one years old, had income from a parttime job totaling approximately $600 per month. Suzanne estimated that she could become self-supporting as a Christian Science Practitioner in three to five years.

The trial court properly exercised its discretion when it unequally divided the marital property. The presumption that marital property will be equally divided is rebuttable. *See* ***Jasper v. Jasper***, 107 Wis.2d 59, 67, 318 N.W.2d 792, 796 (1989). Disproportionate contributions to the marital estate from a separate inheritance constitutes a basis for unequal division for the marital estate. *See* ***Schwartz v. Linders***, 145 Wis.2d 258, 263, 426 N.W.2d 97, 99 (Ct. App. 1988).[2]

The trial court properly exercised its discretion when it awarded Suzanne limited term maintenance. Harold argues that Suzanne should be required to use her substantial earning capacity to support herself because Harold is seventy-one years old and living off social security and a pension. Citing ***Forester v. Forester***, 174 Wis.2d 78, 469 N.W.2d 771 (Ct. App. 1983), Harold argues that Suzanne should not be allowed to make a career choice that involves a substantial reduction in her earning capacity and simultaneously insist that Harold support her at the standard of living she enjoyed while she was employed. In ***Forester***, the wife had been employed as a surgical technician during the marriage. At the time of the divorce, she purchased a large boat and was operating a charter sailing business that was not expected to generate income in the foreseeable future. This court required the trial court to consider the wife's earning capacity when determining the

[1] This is an expedited appeal under RULE 809.17, STATS.

[2] Harold argues at length that the inheritance, once commingled, must be included in the marital estate. The trial court did include the inherited property in the marital estate and unequally divided the estate. All of the arguments regarding the commingling of the assets are based on factual premises that do not exist in this case.

amount and duration of maintenance. ***Forester*** is inapposite because the parties here had planned during the marriage to become Christian Science Practitioners and live on substantially less earnings than they had when they were both employed at Lockheed. The parties' plans and expectations made years before divorce proceedings were commenced are entitled to consideration. Suzanne must be allowed a fair choice of her occupation even though the transition will result in a reduced standard of living. *See* ***Balaam v. Balaam***, 52 Wis.2d 20, 28-29, 87 N.W.2d 867, 872 (1971). Had the parties remained married, they would currently be sharing in the reduced standard of living that they had anticipated for years.

The trial court considered each of the parties' needs and abilities. Suzanne estimated monthly housing expenses of $450 per month compared to Harold's $1,100. The court conceded that it would be difficult to support two households on the limited monthly income of both parties. The limited term maintenance is reasonably designed to help Suzanne meet her modest living expenses while pursuing a career that, during the marriage, the parties anticipated for her. While Harold's expenses slightly exceed his income, the trial court reasonably concluded that Harold must share in the reduced standard of living that both parties will experience. In light of the parties' long-term plans, income and expenses, the award of limited term maintenance satisfies both the support and fairness objectives identified in ***LaRocque v. LaRocque***, 139 Wis.2d 23, 33, 406 N.W.2d 736, 740 (1987).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.