TRUSTS AND WILLS

IN RE ESTATE OF CARMAN: AUGMENTED GROSS ESTATE COMPUTATIONS IN THE CONTEXT OF A FARM WIFE'S OPTION TO TAKE AN ELECTIVE SHARE AGAINST HER SPOUSE'S WILL

INTRODUCTION

The augmented estate provision of the Nebraska Statutes provides that property owned by the surviving spouse is presumed to have been derived from the decedent except to the extent the surviving spouse established that it was derived from another source.¹

1. NEB. REV. STAT. § 30-2314(a)(iii) (Reissue 1979). Section 30-2314 is set out below. It was amended by L.B. 694, § 4, 1980 Neb. Laws 565-69, effective July 19, 1980. The amendment was primarily of the “housekeeping” variety, except that the augmented estate computation now includes transfers made within three (rather than two) years of decedent’s death, to the extent that aggregate transfers to any one donee in any year exceed $3,000. See NEB. REV. STAT. § 30-2314(1)(iv) (Reissue 1979).

30.2314. Augmented Estate. The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred by the decedent except (a) the value of property transferred prior to the marriage of the decedent and the surviving spouse, and (b) the income, increments, proceeds and reinvestments of such property, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money’s worth for the transfer, if the transfer is of any of the following types:
   (i) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;
   (ii) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;
   (iii) any transfer whereby property is held at the time of decedent’s death by decedent and another with right of survivorship;
   (iv) any transfer made within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed three thousand dollars.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent’s death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing in this subdivision shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(2) The value of property owned by the surviving spouse at the decedent’s death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible [sic] in the spouse’s augmented estate if the surviving
Recently, the Nebraska Supreme Court interpreted this and other provisions of the Nebraska Statutes concerning augmented gross estate computations in the context of a farm wife's option to take her elective share against her spouse's will. In *In re Estate of Carman*, the surviving spouse, Mrs. Carman, claimed that the "other source" from which she derived a one-half interest in the property subject to her claim was her earnings from the farm's cattle, hog and grain operations. Alternatively, if the court found her one-half interest in the property to be derived from the decedent, Mrs. Carman claimed that that interest should be excluded from the augmented gross estate computation because she gave consideration "in money's worth." The court, however, ruled against Mrs. Carman and held that the interest she claimed should be included in the augmented gross estate computation.

This casenote will analyze the Nebraska Supreme Court's interpretation of section 30-2314 of the Nebraska Statutes. In partic-

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2. 213 Neb. 98, 327 N.W.2d 611 (1982).
4. *Id.*
5. 213 Neb. at 101, 327 N.W.2d at 614.
ular, this article focuses on the court's holding that a spouse's labor cannot be consideration "in money's worth."

FACTS AND HOLDING

The decedent, Harry W. Carman, and Amanda Carman were married in 1959 at the ages of 50 and 49, respectively. At the time of their marriage, Mrs. Carman owned two houses, a checking account and bonds, the latter of which was placed in joint tenancy with her husband. Mr. Carman owned 160 acres, a pickup, cattle, pigs, two checking accounts, a bank deposit box, furniture and machinery. After their marriage, the land Mr. Carman owned and the houses belonging to Mrs. Carman remained in their respective names, but one of Mr. Carman's checking accounts was changed to a joint account. Although none of the farm income was ever deposited into Mrs. Carman's personal account, money was taken from that account to pay farm expenses.

Together, the Carmans bought the land subject to this action on September 20, 1966. They put a $4,800 down payment on the land, which Mr. Carman paid from his account, and gave an $11,200 mortgage on the property. The land was titled in their names as tenants in common. Income from the farm operation was deposited in both Mr. Carman's separate account and the couple's joint account, and most of the farm expenses were paid from the joint account. The mortgage on the property, which Mrs. Carman co-signed, was paid from farm income from grain, cattle and hog sales.

6. Id. at 100, 327 N.W.2d at 613.
8. Id. at 12-13.
9. Id. at 13.
11. Id.
13. Id. at 14. The Brief of Appellee, at 10, states the amount as $4,200.
15. Id. at 13. Tenants in common each own an individual interest in land and they hold their interests without right of survivorship. Thus, when one cotenant dies, his interest in the jointly owned property passes according to his will or by the laws of intestate succession. Joint tenants, however, hold title with right of survivorship, so when one joint tenant dies, his interest automatically vests in the other, without passing through the deceased joint tenant's estate. L. TIFFANY, THE LAW OF REAL PROPERTY §§ 418-419, at 426 (3d ed. 1939).
17. Id. at 10. Mrs. Carman testified that during a conference with a bank officer when the Carmans were seeking a loan to purchase this property, the bank officer was concerned about the collateral the Carmans were pledging for the loan. He
Mrs. Carman's duties on the farm, in addition to the regular duties of a housewife, included raising chickens, selling eggs and fryers; milking cows, separating and selling cream (the proceeds of which were deposited into the joint farm account); feeding cattle (five of which she purchased herself) and hogs; scooping grain; putting up hay; chopping sunflowers, cockleburrs and musk thistles by hand; fixing fence; driving tractors and stacking hay bales; assisting in the repair and welding of machinery; assisting in the repair and reshingling of farm buildings; and assisting in the butchering process, which included cutting up all the meat by herself.18 The Carmans rarely hired outside help, and Mrs. Carman testified that they hired extras only "on some of the big things we couldn't do ourselves."19

Mr. Carman's will devised to Mrs. Carman a life estate in certain real estate, and divided the remainder of his real estate in equal shares among his grandnephew and three grandnieces.20 Mr. Carman bequeathed his personal property to Mr. Robert Downey in trust, to pay the income to Mrs. Carman and, upon her death, to distribute the corpus in equal shares to the appellants.21

At the time of Mr. Carman's death, October 28, 1978,22 section 30-2313(a) of the Nebraska Statutes23 provided: "If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated."24 Mrs. Carman exercised this right of election, deciding to take against the will the specified one-third share of her husband's augmented estate.25 "Augmented estate," as referred to in the above provision, is a value derived from computations encompassed in section 30-2314 of the Nebraska Statutes.26 In discussing the augmented estate in Carman, the Nebraska Supreme Court stated:

[S]o far as material here . . . [the augmented estate is defined] as the probate estate, less certain allowances, plus
the value of property owned by the spouse at the dece-
dent's death and which would have been includable in the
surviving spouse's augmented estate if that spouse had
predeceased the decedent, to the extent the owned prop-
erty was derived by the surviving spouse from the dece-
dent without a full consideration in money or money's
worth.\textsuperscript{27}

The County Court of Buffalo County, Nebraska, had approved
a computation of the augmented estate which included the following items at one-half their total value:\textsuperscript{28} the real estate owned as
tenants in common; the corn, milo, cattle, machinery and hogs; the
joint checking accounts; a joint certificate of deposit; a 1972 Chev-
rolet pickup sedan; and a 1965 Chevrolet sedan.\textsuperscript{29} In support of this
computation, the Buffalo County Court first cited the presumption
set forth in the statute that property owned by the surviving
spouse at decedent's death was derived from the decedent, except
to the extent that the surviving spouse establishes that it was de-

erived from another source.\textsuperscript{30} The county court then held that Mrs.
Carman had rebutted this presumption by offering evidence that
the real estate was owned by the couple as tenants in common,
that it was purchased during their marriage, and that the mortgage
on the land was repaid from income generated from the operation
of the farm.\textsuperscript{31} This evidence and evidence of Mrs. Carman's labor
expended performing farm duties, was, in the county court's view,
sufficient evidence that she had contributed "in money's worth" to
establish that the one-half interest in the property exempted from
the augmented estate computation was "derived from another
source."\textsuperscript{32}

The District Court of Buffalo County approved the county
court's finding as to the real estate, the joint checking account, the
certificate of deposit, the pickup and the car.\textsuperscript{33} However, as to the
corn, milo, cattle and machinery, the district court found that Mrs.
Carman had failed to prove ownership of a one-half interest therein, and remanded the case with directions to include the full
value of those items in the augmented estate computation.

Decedent's grandnephew and grandnieces appealed this deci-
sion to the Nebraska Supreme Court, asserting that the aug-
mented estate computation should include the full value of the

\textsuperscript{27} 213 Neb. at 99, 327 N.W.2d at 613.
\textsuperscript{28} Brief of Appellee at 3.
\textsuperscript{29} \textit{Id.}
\textsuperscript{30} NEB. REV. STAT. § 30-2314(2)(iii) (Reissue 1979). \textit{See} note 1 \textit{supra.}
\textsuperscript{31} Brief of Appellee at 3-4.
\textsuperscript{32} \textit{Id.} at 4-5.
\textsuperscript{33} \textit{Id.} at 5.
tenancy in common property, the joint checking account, the certificate of deposit, the pickup and the car. Mrs. Carman, on the other hand, urged "that only one-half of the tenancy in common real estate, items of farm production, and the other items of personality should be included; the other one-half being her own and separate estate."

Mrs. Carman filed a partnership tax return subsequent to Mr. Carman's death. She conceded that she and her husband had not entered into a formal partnership arrangement, but asserted that a formal written partnership agreement was not necessary. Although the county court had held that a spouse's contribution of labor to a family enterprise, regardless of how it is nominally held, entitles that spouse to the benefits of his or her labors, the district court rejected this ruling. The district court held that marriage alone does not establish a partnership in the farming operation, nor does contribution by a surviving spouse in the form of labor and participation create a legal partnership.

On appeal, the Nebraska Supreme Court held that Mrs. Carman was not entitled to a one-half interest in any of the aforementioned property. The court saw the issue as being whether Mrs. Carman's labor constituted a contribution "in money's worth" such that one-half of the value of farm production and jointly acquired property should be excluded from the augmented gross estate computation. The court, recognizing that case law adopts that point of view for tax purposes, nevertheless chose to adhere to, "our traditional view that in the absence of an express contract to compensate a spouse for extra and unusual services no obligation to do so will be implied."

34. Id.
35. Brief of Appellants at 7.
36. 213 Neb. at 100, 327 N.W.2d at 613.
37. Brief of Appellants at 14.
38. Id. at 16-17.
40. Brief of Appellants at 2.
41. Id. at 3.
42. 213 Neb. at 101-02, 327 N.W.2d at 614.
43. 213 Neb. at 101, 327 N.W.2d at 614.
44. Id. See Peterson v. Massey, 155 Neb. 829, 383-386, 53 N.W.2d 912, 917 (1952); Brodsky v. Brodsky, 132 Neb. 659, 663, 272 N.W. 919, 921 (1937). See note 47 infra. See, e.g., Mays v. Wadel, 142 Ind. App. 565, —, 236 N.E.2d 180, 183 (1968) (while husband and wife are living together as such, there can be no express or implied contract between them for compensation for services rendered in the common support of that household); Verity v. Verity, 21 Misc. 2d 385, —, 181 N.Y.S.2d 204, 208 (Sup. Ct. 1959) (wife's common law duty to her husband to render services to him remains despite the married woman's property acts, and if he pays her for services, the payment is a gift and a promise she can't enforce); Andrews v. English, 200
The supreme court then concluded: “Accordingly, a spouse’s labor does not become a contribution ‘in money’s worth’ such as to take one-half the value of jointly produced and acquired assets out of the augmented estate computation.” The court also rejected the view that Mrs. Carman's labor, coupled with the consideration of the farm mortgage lender of her separate property, established a contribution “in money’s worth” to the commonly owned real property. The court stated: “[T]he fact that a separately owned asset was relied upon to acquire another asset during marriage does not, in and of itself, change the nature of the contribution by a spouse to the acquisition of a shared asset.” In summary, the supreme court decided that the entire value of the items of farm production and the jointly held property should be included in the computation of the augmented gross estate.

**Analysis**

In formulating its argument, the supreme court concentrated on whether Mrs. Carman's services were such that they constituted a contribution “in money’s worth,” within the meaning of the statute. The court refused to rely on those tax cases which held that a spouse's labor can be a contribution in “money’s worth.” Perhaps the court relied on the appellant's contention that federal estate tax laws have different objectives than the statutory provisions relating to augmented estate computations. It should be noted, however, that the cases cited in support of the “traditional view” are not cases having to do with augmented estate computations, but rather with determining whether a partnership exists or whether a resulting trust arises in favor of a person who furnishes consideration for the purchase of property taken in the name of another.

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45. Okla. 667, —, 199 P.2d 202, 204 (1948) (women can contract with their husbands, but between a husband and wife an obligation of payment doesn't arise absent an express agreement); Jennings v. Conn, 194 Or. 686, —, 243 P.2d 1080, 1081 (1952) (a wife may not recover, in the absence of an express contract or statutory provision, from her husband for personal services rendered him).
46. 213 Neb. at 101, 327 N.W.2d at 614.
47. The court is evidently saying that the fact that the lender asked Mrs. Carman for information regarding property she owned when the Carmans were seeking a loan for the property which is the subject of this suit, does not constitute a contribution by Mrs. Carman to the instant property. The court does not quote any statutory authority for this statement.
48. Id. at 101, 327 N.W.2d at 614.
49. See notes 104-117 and accompanying text infra.
51. 213 Neb. at 101, 327 N.W.2d at 614. The court cites Peterson and Brodsky in
As stated in the comment to section 30-2314:52
The purpose of the concept of augmenting the probate estate in computing the elective share is twofold: (1) to prevent the owner of wealth from making arrangements which transmit his property to others by means other than probate deliberately to defeat the right of the surviving spouse to a share, and (2) to prevent the surviving spouse from electing a share of the probate estate when the spouse has received a fair share of the total wealth of the decedent either during the lifetime of the decedent or at death by life insurance, joint tenancy assets and other nonprobate arrangements.53

The second purpose set out in the above comment refers to joint tenancy property the surviving spouse receives by virtue of nonprobate transfers. The statute forces the surviving spouse to add the total value of such acquisitions back into the “pool” upon which the computation is figured, to the extent not “paid for” by consideration in money or money’s worth, nor derived from a source other than the decedent.54 The Buffalo County Court found the tenancy in common rather than joint tenancy ownership of the farm significant: “This, in and of itself, indicates the intention of the parties to vest half interest in each spouse to the exclusion of the other.”55

52. NEB. REV. STAT. § 30-2314, comment (Reissue 1979).
53. Id.
54. See note 1 supra.
55. Brief of Appellee at 4. The statute, in § 30-2314(2)(i), mandates inclusion in the augmented gross estate computation of, among other things, the value of the surviving spouse's share of “community property” owned in this or any other state. See note 1 supra. Section 30-2314(2)(iii) states that property owned by the surviving spouse at decedent's death is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source. Thus, the latter section adds tenancy-in-common property to the joint tenancy property referred to in the Comment, but the type and consequences of ownership are different for the two. See note 15 supra. Presumably the Buffalo County Court saw the tenancy-in-common form of ownership as rebutting the pre-
The object of section 30-2314 is to prevent a surviving spouse from electing to take a share of the estate when she has already received a "fair share." The statute achieves this end by forcing the spouse to, essentially, credit against his or her elective share any amount received from the decedent by inter vivos transfers. Mr. Carman's will devised to Mrs. Carman a life estate in certain real estate, and perhaps in this case she received a "fair share" of the estate. However, the ruling of the supreme court that a spouse's labor does not become a contribution "in money's worth" for computing the augmented gross estate is a proclamation so general as to be a potentially dangerous precedent. Mrs. Carman is illustrative of the modern farm wife who helps her husband run the family farm business; the type of labor Mrs. Carman contributed to the family enterprise is to be distinguished from services provided by other housewives in caring for their homes and families.

Quoting from a New Jersey Supreme Court case, one writer has acknowledged that "marriage is a shared enterprise, a joint undertaking, that in many ways it is akin to a partnership." That author asserts that, "[h]ousewifery is valuable work, necessary work, and culturally encouraged work. It should be compen-

56. See note 52 supra.
57. See note 1 supra.
58. 213 Neb. at 99, 327 N.W.2d at 613.
59. See note 61 infra.
60. 213 Neb. at 101, 327 N.W.2d at 614.
61. The Comment to Neb. Rev. Stat. § 30-2314 (Reissue 1979) indicates a desire of the legislature to ensure that a surviving spouse gets a "fair share" of the estate of the decedent spouse. In the instant case, Mr. Carman's will devised Mrs. Carman a life estate in the real estate in question, so if a life estate in this case constitutes a "fair share"—a question beyond the scope of this article—the purpose of the statute is not thwarted by the Carman decision. However, suppose a decedent spouse devises to the surviving spouse an amount which clearly will not adequately provide for the needs of the surviving spouse. The surviving spouse, as did Mrs. Carman, will seek to take a one-half share of jointly held property as her own rather than having to add it into the "pot" from which she will be entitled to only one-third as her statutory share. To do this, the surviving spouse will argue that her labor helped pay for the property, so her one-half interest is exempt from the augmented gross estate computation because she "paid" for it by giving consideration "in money's worth." The Carman decision might defeat this argument, regardless of how small the devise under decedent's will, and regardless of what extent and type of services she contributed, because "a spouse's labor does not become a contribution 'in money's worth.'" 213 Neb. at 101, 327 N.W.2d at 614.
62. See notes 74-82 and accompanying text infra.
sated." As to presumptions arising regarding property ownership, she writes:

[A]ny . . . system of marital property rights should be based on the presumption that persons entering marriage are doing so on the basis of equality, that their contributions to the marriage are likewise presumed to be equal, and that the distribution of assets at its termination will reflect that presumption. If some other property distribution is desired, the man and woman should be free to select and implement its terms, and generally speaking, the law should enforce their arrangement.

Although it is necessary to have some form of agreement for a partnership relationship to exist, courts have found that such a relationship can be implied from the circumstances. Further, it is possible for a partnership to exist where one party has contributed nothing more than services, and in such a case, property acquired with funds derived from the partnership enterprise is partnership property. Thus, in situations not involving family

65. Id. at 40.
66. Id. at 46.
67. Cyrus v. Cyrus, 242 Minn. 180, —, 64 N.W.2d 538, 541 (1954) ("parties have entered into a contractual relation whereby they have combined their property, labor, and skill in an enterprise or business as co-owners for the purpose of joint profit"). Heck & Paetow Claim Serv., Inc. v. Heck, 93 Wis. 2d 349, —, 286 N.W.2d 831, 835-36 (1980) ("a partnership is an association of two or more persons formed to carry on a business as co-owners for profit . . . A partnership agreement, whether express or implied, may be in writing or proven by circumstantial evidence demonstrating that the conduct of the parties was of such a nature as to clearly express the mutual intent of the parties to enter into a contractual relationship . . . . The ultimate and controlling test as to the existence of a partnership is the parties' intention of carrying on a definite business as co-owners").
68. Humboldt Livestock Auction, Inc. v. B & H Cattle Co., 261 Iowa 419, 431, 155 N.W.2d 478, 486 (1967) ("Written articles of agreement are not necessary to prove a partnership, since the relationship may exist under a verbal agreement or be implied from circumstances."); Hansen v. Adent, 238 Minn. 540, —, 57 N.W.2d 681, 684 (1953) ("When parties contribute their experience, their capital, and their energies to a common enterprise, in which they are to share the profits, a partnership may result, notwithstanding an expressed intention not to create such a relationship").
69. Cyrus, 243 Minn. at —, 64 N.W.2d at 542-43 ("Although Cecil may have contributed nothing but his services to the resort business, this does not preclude the existence of a partnership. It is not unusual for two or more persons to unite in business, one contributing money and the other labor, the profits being provided between them; and in such cases it is often held that a partnership is formed . . . [T]he fact that Cecil handled the money taken in and managed the resort is indicative of something more than an employer-employee relationship; and it is generally recognized that such fact tends to show a partnership. Furthermore, it is evident that there was a community of interest between Cecil and Curtis . . . and this circumstance is an additional indicium of a partnership . . . . [T]he 40-acre tract was partnership property. The evidence supports a finding that it was purchased with earnings from the [business], a fact which in the absence of other circumstances denotes that the property belonged to the partnership . . . . Unless the contrary
members, courts have found partnerships existing among individuals joined in a business venture without requiring a formal agreement between them.\textsuperscript{70}

The problem arises when the individuals are members of the same family.\textsuperscript{71} The supreme court in \textit{Carman} cited the Nebraska case of \textit{Peterson v. Massey}\textsuperscript{72} for the "traditional" view that there must be an express agreement between spouses to require compensation for extra and unusual services.\textsuperscript{73} In \textit{Peterson}, although the wife contributed money and services to the farm operation, the court relied on the absence of evidence of "any understanding or agreement" between the spouses.\textsuperscript{74} The \textit{Peterson} court further stated:

\begin{quote}
[W]here the parties are husband and wife, there is a presumption that the placing of title in the name of one spouse was intended by the other spouse as a gift. . . . An express contract between husband and wife that she shall receive reasonable compensation for extra and unusual services rendered him outside of her domestic duties is valid. . . .\textsuperscript{75}
\end{quote}

Mrs. Carman argued that \textit{Peterson} stands only for the proposition that an express contract between husband and wife regarding compensation for her services is enforceable.\textsuperscript{76} The Nebraska Supreme Court, however, held that the significance of \textit{Peterson} is that there must be an express contract, and the court would not impose an obligation to compensate a spouse otherwise.\textsuperscript{77}

This "traditional view" is not universal, however. Although cognizant of the existence of the presumption that services rendered to one family member by another are gratuitous, the Iowa Supreme Court in \textit{Ferris v. Barrett}\textsuperscript{78} held that, "[a]s between a husband and wife, if the work is completely nonmarital, the wife can collect for the services rendered."\textsuperscript{79} The phrase "completely nonmarital" is somewhat ambiguous, but the facts of the \textit{Ferris} case lend some definition to the term. In \textit{Ferris} the wife took care

\begin{thebibliography}{9}
\bibitem{70} See notes 67-69 and accompanying text \textit{supra}.
\bibitem{71} See notes 73-77 and accompanying text \textit{infra}.
\bibitem{72} 155 Neb. 829, 53 N.W.2d 912 (1952).
\bibitem{73} 213 Neb. at 101, 327 N.W.2d at 614.
\bibitem{74} \textit{Peterson}, 155 Neb. at 835, 53 N.W.2d at 916.
\bibitem{75} \textit{Id.} at 835-36, 53 N.W.2d at 916.
\bibitem{76} Brief of Appellee at 16.
\bibitem{77} 213 Neb. at 101, 327 N.W.2d at 614. \textit{See note 44 supra} for a discussion of how other jurisdictions have treated the express contract requirement.
\bibitem{78} 250 Iowa 646, 95 N.W.2d 527 (1959).
\bibitem{79} \textit{Id.} at 651, 95 N.W.2d at 530.
\end{thebibliography}
of her deceased husband's aged sister, providing room, board, laundry and personal care, for approximately four years. The wife sought reimbursement from her husband's estate for those services. Surely one could argue that Mrs. Carman's farm labor was as "completely nonmarital" as caring for one's sister-in-law. The *Ferris* court stated:

> It is only a presumption that the services are rendered gratuitously, when rendered by one member of a family to another, but not a conclusive presumption. It is a presumption that may be negatived, as well by circumstantial evidence as by direct; and, when this presumption is negatived, the general rule applies: to wit, that, where one renders services to another, with his knowledge, the law implies a promise to pay.

Although discounted by the *Carman* court as being a tax case, *Craig v. United States*, a United States District Court case, is quite similar to *Carman* on its facts. In *Craig*, the spouses acquired land subsequent to their marriage, financed in part by loans which were repaid from farm income. Mrs. Craig accompanied her husband on cattle-buying trips and was in charge of the bookkeeping. She contributed control and management, provided "comforts of life" for hired farm hands, and had an equal voice in all major decisions in the farm operation. Mrs. Craig managed the egg marketing aspect of the business and deposited proceeds from this venture in the couple's joint checking account. She raised a garden for the family, helped with the harvest, hauled cattle to pasture and made trips to surrounding towns to obtain repair parts for farm machinery. The court stated that "[a]ll in all, the efforts of Bessie Craig... can properly be characterized as those of a partner, in the fullest business sense of the word."

Mrs. Craig contended that only fifty percent of the personal property should be included in her husband's estate for estate tax purposes because a family partnership existed with respect to the farming operation. The court held:

80. *Id.* at 648, 95 N.W.2d at 529.
81. *Id.* at 648, 95 N.W.2d at 528.
82. *Id.* at 651-52, 95 N.W.2d at 530-31.
83. 213 Neb. at 101, 327 N.W.2d at 614.
85. *Id.* at 380.
86. *Id.*
87. *Id.* at 381.
88. *Id.*
89. *Id.*
90. *Id.* at 379.
This means that if there is indeed existed a family farming partnership . . . the IRS was in error to include the value of all the personal property in the taxable estate of Clarence Craig. . . . I am convinced that Bessie and Clarence Craig did in fact pool their capital and labors with the intent to conduct a family partnership. . . .

After stating that the determinative question was whether the parties intended to join together in the enterprise, the *Craig* court held that the evidence was convincing that the Craigs intended, in good faith, to join their income and labors as equal partners in the establishment and growth of the family farm. The *Craig* court cited with approval *United States v. Neel*, another tax case, which held that the absence of a formal partnership agreement and the failure to set up books as partners was not conclusive, and which gave weight to evidence that each party made substantial contributions of labor and services to their joint undertakings. Each party in the *Neel* case exercised authority, control and management, contributed substantial vital services and had authority to draw on their bank accounts. The *Craig* court felt that the same situation existed with Bessie and Clarence, stating:

To hold otherwise would require this Court to ignore the reality of the wife's contribution to the family farm. . . . [I]t was also agreed that the hard-earned rewards of that labor would be reinvested into the business rather than be kept by each spouse for his or her personal economic choices. . . . The success they enjoyed . . . was because of their joint efforts.

In the case at hand, Mrs. Carman's argument included an assertion to support her contention that the farm property was not a gift from her husband. This assertion was that, by virtue of her labor done in furtherance of the farm business, she became a part-

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91. *Id.* at 381.
92. *Id.* at 381-82.
93. 235 F.2d 395 (10th Cir. 1956).
94. 451 F. Supp. at 382. The court in *Craig* discussed the *Neel* opinion as follows: "[t]hereafter, each made substantial contributions of labor and services to their joint undertakings in farming, business, and the practice of law. On occasions they engaged in separate activities, but always the earnings from such separate activities were placed in their joint bank accounts. Each exercised authority, control, and management over the various business endeavors in which they jointly engaged. Each contributed substantial vital services in carrying on their joint undertakings. Moneys that came to each of them through inheritance were placed in the joint bank accounts. Each had authority and in fact did draw checks on their several bank accounts." *Id.*
95. 235 F.2d at 400.
96. 451 F. Supp. at 382-83.
97. 213 Neb. at 101, 327 N.W.2d at 614.
ner in the enterprise.\textsuperscript{98} Thus, one-half of the value of the real and personal property acquired from profits of the business was her separate and sole property.\textsuperscript{99} She contended that this one-half interest was not includable in the augmented gross estate computation because it was property derived from “another source,” not from Mr. Carman.\textsuperscript{100} The cases cited above show not only that a partnership may be implied from circumstances and that property acquired with partnership assets is considered partnership property, but also that the presumption that services provided to one’s spouse are provided gratuitously is a rebuttable presumption.\textsuperscript{101}

Although the court’s holding as to the nonexistence of a partnership is questionable, the more troublesome portion of the Carman opinion is the holding that a spouse’s labor is not consideration “in money’s worth.”\textsuperscript{102} As a general principle of contract law, labor or services can constitute consideration.\textsuperscript{103} Whether they are consideration “in money’s worth” is a more difficult issue, one summarily disposed of by the Carman court.

Courts in the fourteen states\textsuperscript{104} other than Nebraska that have adopted some or all of the Uniform Probate Code, have not interpreted the “in money’s worth” language. The Nebraska Supreme Court in Carman discounted cases adopting the interpretation of this phrase for tax purposes as including the labor of a farm spouse.\textsuperscript{105} The comment to section 30-2314 states that the objec-

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\textsuperscript{98} Id.
\textsuperscript{99} 213 Neb. at 101-02, 327 N.W.2d at 614.
\textsuperscript{100} Id.
\textsuperscript{101} See notes 67-95 and accompanying text supra.
\textsuperscript{102} 213 Neb. at 101, 327 N.W.2d at 614. See note 61 supra.
\textsuperscript{103} Dickinson v. Auto Center Mfg. Co., 639 F.2d 250, 253 (5th Cir. 1981) (“consideration . . . is satisfied when any act of a plaintiff from which a defendant derives benefit, or by any labor, detriment, or inconvenience sustained by a plaintiff at either defendant’s express or implied consent is present. Moreover, the detriment which may be found to constitute adequate consideration . . . may be based on either the express or implied consent of the promisee.”) (citations omitted).
\textsuperscript{104} Similarly, in Kinkenon v. Hue, 207 Neb. 696, 704-05, 301 N.W.2d 77, 81 (1981), the court held that housekeeping services performed pursuant to an oral agreement were sufficient consideration to support the agreement.
\textsuperscript{105} 213 Neb. at.
tives of the tax law are different from those of the Probate Code. That statement is not made, however, in connection with a discussion of the meaning of “in money’s worth.”

The Uniform Probate Code Practice Manual states that the Uniform Probate Code, from which section 30-2314 is derived, is “intended to reach only gratuitous transfers. Thus, a transfer is only included ‘to the extent that the decedent did not receive adequate and full consideration in money or money’s worth. . . . ’ This language is borrowed from federal estate tax law and should be given comparable interpretation.” Thus, the Nebraska court’s argument is misplaced. Although the different objectives of tax law and the Probate Code are relevant to considerations of the types of transfers a decedent may make to defeat the spouse’s elective share, the two bodies of law are in harmony with respect to the meaning of the phrase “in money’s worth.”

The Uniform Probate Code Practice manual states that “in money’s worth” is to be interpreted for purposes of the augmented gross estate computation comparably to its interpretation for estate tax purposes. The Wisconsin Supreme Court interpreted the “in money’s worth” phrase in In re Estate of Kersten, one of the tax cases cited by Mrs. Carman. In that case, Mrs. Kersten petitioned the court for a redetermination of the inheritance tax payable on her husband’s estate, on the ground that she had made a contribution to the acquisition of the joint property, and that the taxable estate should be reduced by the amount of that contribution. The Kerstens jointly owned a farm and made capital improvements which were paid for out of farm profits. As the court set forth:

that one-half the value of the farm production and jointly acquired personality should be excluded from the augmented estate and set over to appellee as her own property. Notwithstanding the cases cited to us which adopt that point of view for tax purposes we adhere to our traditional view. . . .) (citations omitted).

109. 1 Uniform Probate Code Practice Manual 100 (R. Wellman 2d ed. 1977). This section deals with joint interests and sets out guidelines for what type of property held jointly by spouses is to be included in decedent’s gross estate for estate tax purposes. The pertinent part of the section is as follows:

The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants . . . or as tenants by the entirety . . . except such part thereof as may be shown to have originally belonged to such other person and never to have been acquired . . . from the decedent for less than an adequate and full consideration in money or money’s worth . . . . id.

110. 71 Wis. 2d 757, 239 N.W.2d 86, 89-91 (1976).
111. Id. at —, 239 N.W.2d at 87.
[Mrs. Kersten] helped keep the farm books, cared for and trained the calves, helped with the milking, operated tractors during baling operations, and generally assisted her husband in the farm work.

Additionally [she] ran the farm alone for two periods of time [when] . . . her husband was ill. However, she testified that neither could have successfully operated the farm without the assistance of the other. . . . Doris Kersten testified that there was never a written partnership or joint venture agreement between herself and her husband. . . . Farm income was reported by Lester Kersten as his income for social security purposes. The milk check, the primary source of farm income, was made out to Lester Kersten.

The court framed the issue as whether Doris Kersten's personal services on the family-operated farm constituted consideration in money or money's worth in return for her interest in the property jointly held by her and her husband. The court also stated that "consideration in money or money's worth" is "such consideration as is reducible to a money value or is capable of being valued in terms of money. . . . Under the federal exemption provision, personal services can serve as consideration 'in money's worth' in return for an acquisition of an interest in jointly held property."

Based on its examination of the Kersten case, the court ruled:

We agree with the trial court holding that the continuing contribution of Doris Kersten in services, industry and skills to [the] operation of the farm enterprise constituted contribution 'in money's worth' in the production of the joint income used to acquire the jointly held assets. . . . We further agree . . . that Doris Kersten was entitled to credit for inheritance tax purposes for such contributions on her part to the jointly held property owned by her and her husband at the time of his death.

The court further held that it was not necessary to place a monetary value on the services or contribution, and said that, if the services met the consideration test, and if there was the usual husband-wife joint tenancy involved, the property includable in the decedent's estate for inheritance tax purposes was to be reduced by one-half.

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112. Id.
113. Id. at --, 239 N.W.2d at 89.
114. Id. at --, 239 N.W.2d at 90.
115. Id.
116. Id. at --, 239 N.W.2d at 91. See also Estate of Everett Otte, 41 T.C.M. (P-H) 317 (1972). This tax court case involved a farm wife who took care of chickens and egg production, cared for livestock, produced certified feed with her husband and
Therefore, it is evident that for tax purposes, contribution of labor and services such as those performed by Mrs. Carman are sufficient consideration "in money's worth" to justify exclusion of one-half of jointly held property from decedent's estate. Given the suggestion of the Uniform Probate Code Practice Manual that courts should adopt a similar interpretation of "in money's worth" for purposes of excluding jointly held property from the computation of decedent's augmented gross estate, Mrs. Carman's argument is meritorious.

CONCLUSION

The dual purposes of the augmented gross estate provision found in the Nebraska statute should be considered equally. Those purposes are to protect the surviving spouse from disinheritance while simultaneously protecting the decedent's estate plan. The computation, provided by the statute, of the amount against which the surviving spouse may elect, can effectively promote both goals. However, the nature of the contribution that a farm wife makes to the operation of the family farm is such that computation of her "fair share," should somehow recognize the extent of her labor. To say, as did the Nebraska Supreme Court, that a spouse's labor does not become a contribution "in money's worth," ignores the peculiar character of a farm wife's labor, discounts analogous situations in the law where a farm wife

helped deliver the feed. She also set out tomato plants and cabbages and helped pick the crop. She took care of most of the financial affairs of the farm and studied daily farm market reports. During the years the couple farmed with horses, Mrs. Otte would harrow and disc, help plant crops and used the horses to pull hay into the farm. Id. at 319-20.

The tax court found that Mrs. Otte contributed "an adequate and full consideration in money or money's worth in the acquisition of her one-half interest in all of the real and personal property," despite the fact that none of the property "originally belonged to the surviving spouse under section 2040 . . . ." Id. at 322.

The court held, moreover, that, "[w]hile her activities may not have been as extensive as Everett's, she nonetheless was an important auxiliary to her husband in the conduct of his farming operations. On the whole, the contributions made by Lura as an active 'farm wife' were far in excess of those of a housewife discharging ordinary domestic responsibilities and in our opinion such activity fairly justifies a division of the property accumulated during her marriage to decedent for estate tax purposes within the purview of section 2040 . . . ." Id. at 324.

117. See note 116 and accompanying text supra.
118. See note 107 and accompanying text supra.
120. Id.
122. Id.
123. 213 Neb. at 101, 327 N.W.2d at 614.
has been entitled to compensation for her contribution, and sets a potentially dangerous precedent.\textsuperscript{124}

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\textsuperscript{124} See note 61 \textit{supra}. 