No. 19835 -- Mary B. Holstein v. Elborn Holstein

Neely, J., dissenting:

Mr. and Mrs. Holstein married in 1981 when each was almost 50. Instead of insisting upon pages and pages of premarital agreements and careful separation of bank accounts, the Holsteins acted like a family. When Mr. Holstein received a settlement from a personal injury claim that occurred before the marriage, he placed it into a joint account instead of sedulously protecting it as his separate property. My previous complaints seem to have fallen on the majority's deaf ears, but I will keep trying. See Charlton v. Charlton, slip op. 19763 (W.Va. filed Dec. 6, 1991) (Neely, J. dissenting); Koontz v. Koontz, _____ W. Va. ___, ____, 396 S.E.2d 439, 443 (1990) (Neely, J. dissenting); Whiting v. Whiting, _____ W. Va. ____, ____, 396 S.E.2d 413, 426 (1990).

Imagine Mr. X and Ms. Y, each 50 years of age, preparing to marry one another. Mr. X has \$50,000 in various bank accounts that he has acquired through the course of his life. Ms. Y owns a house, with 10 years left on the mortgage, in which she has accrued \$50,000 in equity. Mr. X's know-it-all friend, Mr. Z, takes him out to dinner one night and tells him all about this Court's previous decision in Whiting and its progeny. He gets Mr. X all upset about the gold-digging Ms. Y. Thereafter, Mr. X insists upon keeping his \$50,000 in separate bank accounts. Ms. Y, then, insists on a written agreement providing that the house is her separate property. Now, instead of looking forward to a lifetime of happy marriage, the parties must bring in their lawyers and negotiate over who owns what. This is not fiction but the reality that the majority's opinions have created.

Whiting v. Whiting must be overruled!

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