

## Are De Facto Relationships Different After All ?

**Chancellor & McCoy [2016] FCCA 53** involved a same sex couple whose de facto relationship lasted for 27 years. At the end of the relationship the Applicant had net assets worth \$720K and the Respondent, \$1.7M.

The Applicant submitted that as this was a long de facto relationship during which time both parties contributed to the large property pool, it was therefore just and equitable for the court to order a property division.

At the conclusion of her judgement, **Judge Turner** observed that it is easy to assume where parties have been together in a recognised legal relationship, whether a marriage or de facto relationship and during that relationship the parties have accumulated property, it automatically follows that a property settlement will occur in the event of a separation. In the majority of cases this is obviously true.

But as the High Court pointed out in *Stanford* it is not always the case.

Throughout this relationship the parties:

- did not intermingle their finances and maintained separate accounts;
- acquired properties in their own names;
- were unaware of the other's financial situation;
- did not make mutual wills; and
- did not nominate each other as the beneficiaries of their respective superannuation fund death benefits.

After comparing the two scenarios the Judge agreed with the Respondent's heavy reliance on the decision of **Thackray J** in **Fielding and Nichol [2014] FCWA 77** in support of her submission that although the parties were in a long de facto relationship, it would not be just and equitable for the court to consider a property division.

The features which distinguished the facts of this case from those in **Fielding** included the following:-

- it involved a heterosexual relationship of 12 years whereas this was a same sex relationship of 27 years.
- the parties were older than the parties in this case who were younger and of similar ages.
- the parties had a joint account for some of the expenses whereas in this case the parties did not.
- there was an absence of direct financial contributions made by the husband to the wife's real property in **Fielding** whereas in this matter the Applicant maintained that direct financial contributions were made.

However the common features are as follows:-

- each couple were involved in a de facto relationship.
- neither couple had children.
- when the parties commenced cohabitation they lived in a house owned and in the name of one party only.
- properties were registered in sole names only and each was solely responsible for all related expenditure.
- their finances were maintained almost entirely separately.
- each contributed almost equally to household bills and groceries.
- they did not execute wills leaving their estate to the other party.
- each party had made some sort of non-financial contribution to the other party's property.
- they lived under the same roof for some period post separation.
- at separation they divided up those few items that had been acquired jointly.

Judge Turner concluded that it would not be just and equitable to make an order altering the property interests of these parties based on finding that they conducted their financial affairs in such a way that neither would nor could have acquired an interest in the property owned by the other.

Whether this separation of finances was initially a conscious decision by one party or both parties was considered irrelevant given that they continued to conduct their relationship without intertwining their finances consistently for some 27 years.