Can a 'Skill Set' be a Contribution ?

On 24 May 2016 **Bryant CJ, Murphy and Kent JJ** set aside the orders of **Stevenson J** made on 27 February 2013 in **Grier & Malphas [2016] FamCAFC 84** on appeal by the Wife and remitted the matter for re-hearing.

The issues at first instance related to the constitution of the asset pool and the proportions of the assets each of the parties should receive based on contributions (given that the Wife's greater future needs were not in dispute).

The gravamen of the Wife's appeal which was endorsed by the Full Court was that the Trial Judge erred in finding that the Husband made greater contributions than the Wife in assessing contributions at 60/40 in his favour.

The parties began living together in 2000, married in 2002 and separated in 2009. The one child was born in 2007. Parenting orders were made in 2011 providing for the child to live with the Wife and spend time with the Husband.

At the time of cohabitation, neither party had significant assets. However in late 2001/early 2002 the Husband established a business which quickly proved to be very successful. In 2008 the husband sold his 50% interest for $9.75M million plus future potential payments up to late 2013, conditional upon fulfilment of performance criteria.

While much of these funds had been dissipated by the end of 2012, the parties still had a substantial pool of non-superannuation assets to divide at the time of the trial totalling about $3.7M.

The husband's position was that he should receive 75% of the pool for bringing a "skill set" into the relationship which he utilised over a five year period and which largely generated the net pool of matrimonial property. The wife's contention was that contributions were equal. She also contended that if the Trial Judge considered that the husband's contribution was greater, then he had cancelled it out with the money that had passed through his hands.

While noting the wife's efforts, the Trial Judge concluded that the contributions should be assessed at 60/40 in the Husband's favour on the basis that the property pool was derived almost entirely from the fruits of the Husband's business venture and that the Wife's contributions could not match those of the Husband.

The Trial Judge then compared the parties' future financial needs and concluded that there should be an adjustment of 10% in the Wife's favour with the result that each of the parties should receive 50% of the net assets,

Bryant CJ noted that while there was no doubt that the Trial Judge gave greater weight to the financial contributions of the husband she did not ultimately appear to place any weight on the fact that the Husband brought into the marriage a "skill set". It followed by inference that the Trial Judge was satisfied that the financial contribution made by the Husband during the course of the relationship, by virtue of the business he and his partner operated and by virtue of its sale, were contributions that should be given more weight than:

- the salary earned by the Wife in the early stages of the marriage;
- the fact that the Wife left the work force to take on the role of parent and homemaker;
- the Wife's contribution as parent and homemaker;
- the Wife's contribution to the renovations to their properties; and
- the Wife's support of the Husband when he set up the business.

While the Wife's contributions were different to those of the Husband, they were significant and not necessarily inferior to those of the Husband.

The three Full Court Judges concluded that the 60/40 contributions assessment in favour of the husband was plainly wrong.

Refer to Case Note '**Tax Advantages and Corporate Responsibilities as Spouse Contributions'** for a summary of the further comments of **Murphy and Kent JJ**.