

Comparing Overwhelming Contributions and Significant Financial Needs in a Modest Asset Pool

Kemp & Wilkinson [2015] FCCA 1621 concerned a short marriage in which one party had made the overwhelming financial contribution toward a modest pool while the other party was the primary carer of their young child.

Judge Scarlett was presented with the following fact scenario:

- the husband was aged 48 and in good health with a gross annual income of \$70K;
- the wife was aged 31 with an annual income of about \$35K which included child support, Family Tax Benefits and Centrelink entitlements;
- their cohabitation was of less than 2 years duration;
- they had one child aged 2 at the time of the hearing who was in the wife's primary care;
- their joint asset pool totalled about \$260K;
- the husband's contributions represented most of both the superannuation and non-superannuation asset pools;
- the Applicant husband sought close to 100% of the pool; and
- while the wife initially claimed 60% of the pool her counsel amended her claim to about 20% of the pool during the hearing.

Based on the limited factors summarised above:

The Judge assessed the parties' **contributions** to the asset pool and the marriage as being:

- 90% by the husband; and
- 10% by the wife.

The Judge assessed the parties' S75(2) **'future financial needs' factors** as warranting a further adjustment of:

- 10% to the wife based on the income disparity and her primary care of their one infant child.

Was 20% of the pool to the wife a **'just and equitable'** share in these circumstances ?

According to the Judge and the Wife's counsel it apparently was, with the Judge concluding with the following comments:

The Court must consider whether the proposed orders are just and equitable.

The wife will receive 20% of the net asset pool and the husband will receive 80%, which reflects his substantially greater contribution over the parties' short marriage. The husband will retain his superannuation intact and the proposed orders will not affect his earning capacity.

I am satisfied that the proposed orders are just and equitable.

Was this an example of the adage 'ask and you shall receive' which is certainly more likely to be the outcome if you don't ask for too much ?