

Financial Contributions Vs Future Financial Needs (No 3)

In **Cobb [2015] FCCA 2653** Judge Bender was called upon to divide assets valued at \$1.060M when a 16 year relationship ended while the parties' three children who lived primarily with the wife were aged 10 years and under.

The Judge summarised the financial issues requiring determination as follows:

- What adjustment should be made in the Husband's favour arising from his initial contribution of \$200K;
- Should the \$85K inheritance due to the Husband from the estate of his late Mother be included in the pool of assets for division between the parties or should it be treated as a financial resource of the Husband;
- What adjustment should be made in the Wife's favour for 'future financial needs' factors and in particular:
 - the disparity in the parties' earning capacity; and
 - the Wife's primary care of three young children;
- if the Court determines the Husband's inheritance is to be treated as a resource of the Husband, how to treat the benefit to the Husband of that inheritance.

In relation to **the Husband's initial financial contribution** issue there was no doubt that this contribution gave the parties financial security relatively early in their relationship such that they were afforded the relative luxury of an unencumbered home and the ability to save. However it was also apparent that during the parties' relatively long relationship of some 16 years, both made considerable contributions to the family and the family's financial security.

Furthermore post separation, the Wife had the primary care of the parties' three children and had by necessity expended a proportion of a partial property settlement in their support whilst the Husband had the benefit of living in the unencumbered family home.

In these circumstances the Judge concluded that there should be a 10% adjustment in the Husband's favour for his initial contribution which represented approximately 20% of the parties' current asset pool.

In **Bonnici [1991] FamCA 86** **the Husband inherited** shortly prior to the separation and the Court held as follows:

A property does not fall into a protected category merely because it is an inheritance. On the other hand, if there are ample funds from which an appropriate property settlement can be made and a just result arrived at, then the fact of a recently acquired inheritance would normally be treated as an entitlement of the party in question.

The other party cannot be regarded as contributing significantly to an inheritance received very late in the relationship and certainly not after it has terminated, except in very unusual circumstances. Such circumstances might include the care of the testator prior to death by the Husband or Wife as the case may be or other particular services to protect the property.

In this matter, the Wife had little interaction with the Husband's late mother during the parties' relationship. It was therefore apparent that this was not a matter which falls into the category of 'very unusual circumstances' leading to the conclusion that the Husband's inheritance from his late mother's was an entitlement of the Husband.

However the Judge accepted that there should be a 'future financial needs' adjustment in the Wife's favour to take account of the factors referred to above of 20%.

Accordingly the Judge concluded that the parties' realisable assets **exclusive of the Husband's inheritance** should be divided such that the Wife received 60% and the Husband 40%.