

## Inheritances Are They In or Out ?

In the recent case of **Nikas & Anthis [2015] FCCA 1871 Judge Bender** dealt with the familiar conundrum of how to deal with an inheritance received late in the relationship.

However that wasn't the only issue Her Honour had to contend with.

It must be said that in this case most of the contributions and virtue seemed to come primarily from the one side of the family.

Almost all of the matrimonial property had been gifted to the parties by the wife's mother, the husband commenced but failed to complete renovations to the property and then gambled \$200K of funds including those borrowed for renovations, and the wife who was the primary carer of their 10 year old son and the higher income earner inherited further substantial property from her mother's estate shortly after separation.

Among the questions to be answered were:

- what contributions adjustments should be made given virtually all the family's assets resulted from gifts from the wife's family;
- should the wife's inheritance form part of the matrimonial asset pool;
- in what proportions should the asset pool be divided after answering the first question; and
- how to balance the future financial needs factors of income disparities, the care of the child, the absence of child support, the substantial financial resource available to the wife if the estate was excluded from the pool and the requirement to recognise that both parties are entitled to a reasonable standard of living.

Judge Bender began by stating the obvious and then posed the critical question, that while there is no doubt that the inheritance received by the Wife shortly after separation was property for the purposes of the Family Law Act, how should that property be treated ?

It was submitted on behalf of the Husband that the Wife's inheritance should be included in the pool of assets for division because the parties lived in the Wife's mother's property for the entirety of the relationship during which time they contributed to its upkeep and maintenance, assisted in her care and visited her in hospital when she was dying.

However the Judge dismissed the husband's claims as exaggerated and assessed his actual contributions as trifling and not amounting to being a significant contribution to his wife's inheritance late in the relationship.

As such, Judge Bender was satisfied that the appropriate approach in this matter was on an asset by asset basis and treated the inheritance received by the Wife from her late Mother's estate separately to the remaining assets of the parties which comprised the matrimonial asset pool.

Accordingly the Wife's retention of the entirety of her inheritance was treated as an adjustment factor, relevant only as a financial resource in assessing the division of the parties other assets being their matrimonial assets.

The Wife's contribution to the matrimonial assets (excluding the inheritances) was then assessed at 90% and the contributions of the Husband at 10%.

Given the disparity in the parties' earning capacity and in particular the very large disparity in relation to the parties' respective financial resources, the Judge made a 17.5% adjustment in the Husband's favour which was partially offset by a 5% adjustment in the Wife's favour recognising her responsibilities for the primary care of the parties' 10 year old son. Together this amounted to a future financial needs adjustment to the husband of 12.5%.

Having already assessed the parties' respective contributions at 90/10 in the wife's favour, Judge Bender ultimately concluded that the matrimonial assets **exclusive of the Wife's inheritance from her late Mother's estate** should be divided 77.5/22.5 in the wife's favour.