

Is an Equal division of Superannuation Always Appropriate ?

The cases of **Sutherland [2015] FCCA 984** and **Carroll and Maybury [2013] FCCA 288** have many factual similarities, as do the judgements of **Judges Brewster and McGuire** respectively.

In each case the Judge awarded the wife 60% of the superannuation pool rather than the more common equal division in circumstances in which both Judges seemed reluctant to award the wife more than 70-75% of the non-superannuation pool despite there being facts which could have justified them doing so.

Perhaps some judges feel a little uneasy if one party's share of the realisable assets in a longish traditional marriage scenario moves beyond 70%.

In **Carroll and Maybury** the parties were in their early 40's and had separated after about 12 years of cohabitation, the husband conducted his own business from which he was earning about \$500K pa and there were three children aged 6-10 in the primary care of the wife who earned a low income working part-time.

The parties' net asset pool totalled approximately \$630K which included \$445K being the net proceeds of the former matrimonial home which had sold for \$1.9M together with \$200K of superannuation.

On the assumption that their contributions would be considered equal, the wife sought a 25% (75/25) adjustment of the net asset pool in her favour by reason of the relevant section 75(2) 'future financial needs' factors of:

- the responsibilities associated with the care of three young children; and
- the substantial income earning disparity.

Upon considering the above section 75(2) factors and the husband's submission for a 15% adjustment, the Judge instead awarded the wife:

- 70% of the 'non-superannuation' pool of assets; and
- **60% of the superannuation assets.**

In **Sutherland** the parties were also in their early 40's and had separated after 17 years of cohabitation, the husband's income was about \$86K and there were three children aged 4-11 in the primary care of the wife who had not worked for many years.

The parties' net non-superannuation asset pool totalled approximately \$420K which included the net proceeds of the former matrimonial home. Additionally the husband had a relatively small superannuation account balance.

Very early in the relationship the wife received an amount of about \$180K from a damages claim which presumably had arisen before the relationship. It was this contribution that enabled the parties to buy a home which was the springboard to the acquisition of the property, the proceeds of which comprised almost all the available pool.

The husband proposed a 65/35 division of the non-superannuation assets and an equal division of his superannuation compared to the wife's claim for an 85/25 division of the property and 60% of the superannuation.

While noting that the damages monies were applied many years ago and their significance had been eroded by the passage of time and the contributions made by the husband in the intervening years, the Judge made a 15% adjustment in the wife's favour for the parties' respective contributions.

In relation to the future financial needs factors being the disparity in the parties' earning capacities and the wife's primary care of three young, the Judge awarded her a further 10% (total 75%) of the non-superannuation pool.

In addition the Judge awarded the wife **60% of the husband's superannuation.**