Splitting Superannuation When There's Nothing Else

In **Wyndham [2016] FCCA 122,** other than for the husband's quite substantial superannuation entitlements, the parties' financial situation was dreadful.

The only relevant assets of the relationship were the parties' superannuation interests. Indeed so trifling were the parties' other assets that neither sought any alteration of interests other than superannuation splitting orders.

The Husband's superannuation interests were valued at **$855K** and the Wife's at **$45K**.

The husband was aged 43 and the wife 35. There were three children of the parties' 12 year relationship aged 14, 10 and 6 who lived with the wife and spent time with the husband.

The husband had worked for the one employer and been a member of its superannuation fund for 9 years prior to the relationship, throughout the relationship and remained so employed at the time of the trial (totalling about 26 years). The wife was a homemaker and primary who was also employed at various times during the marriage and was employed part-time at the time of trial. The wife's superannuation had all accrued since the relationship began.

Neither party suggested that contributions during the relationship, taking into account both financial and non-financial contributions were anything other than equal. The wife admitted that the husband's pre-relationship financial contributions were greater because of his membership of the fund nine years before the commencement of cohabitation. However she submitted that her superior post-relationship contributions equated to the Husband's superior pre-relationship superannuation contributions, such that ...all contributions, financial and non-financial should be considered equal as at the date of trial.

While the wife did not precisely identify or quantify her claimed *"superior post-separation contributions",* **Judge Young** took her to be referring to the fact that the children lived with her and, therefore as their primary carer, the wife had enabled the husband to continue his employment and increase his superannuation interests.

The Judge noted that parties may continue to make contributions after separation, including to superannuation interests, and that those contributions may be direct or indirect financial or non-financial contributions. In this case the fact that the wife had continued to care for the children was an important factor enabling the husband to remain in employment. However the husband had also paid appropriate child support which led the Judge to conclude that the post-separation contributions to the husband's superannuation interests were equal.

In circumstances where:

- there was no valuation available of the husband's entitlements at the commencement of the relationship; and
- neither party was able to explain with any precision how they arrived at the contribution figures they each claimed the wife to have made toward the husband's super (Husband 40% , Wife 50%),

it was also not considered appropriate to simply apply a formula such as (that used in **West v Green**) by dividing the years of cohabitation by the total effective years of service and halving that figure, not least because the later period may be more important because the husband was earning a higher income and the fund's formula may not necessarily give equal weight to each year of effective service.

On balance the Judge found that the wife's contribution to the husband's superannuation interests was 45% and the husband's contribution to the wife's, 50%.

While the Judge was reluctant to make any significant and specific further adjustments of the superannuation interests to reflect the parties' respective and different future financial needs, he decided not to make an actual adjustment to reflect the husband's equal contribution to the wife's much smaller superannuation entitlement which meant that the wife effectively received 47.7% of the parties' combined current superannuation interests.