

A Lack of Dependents Doesn't Extinguish Future Financial Needs Claims

Family Lawyers are frequently challenged to explain why an equal financial settlement is not the fair and obvious outcome where there are no dependent children and where the parties' 'contributions' have to all intents and purposes been of equal quality.

The recent case of **Casey [2012] Fam CA 736** provides a clear illustration of how the existence of compelling 'future financial needs' factors can significantly tip the ledger.

In this case the parties had benefited financially in the latter years of the marriage and since separation by the husband's increased involvement in his father's very successful family business.

While the family's net matrimonial assets totalled only slightly more than \$800K, the wage and discretionary family trust distributions received by the husband in recent years were substantial.

Contributions

Notwithstanding the financial benefits flowing to the couple from the husband's family's business, the Judge considered that until late in the marriage the parties' respective financial and non financial contributions had been of equal value.

However as a consequence of the wife's increasingly significant mental health issues, the husband had assumed greater responsibility for the family's domestic duties and the parenting of the youngest of the parties' four children who was 16 when they separated.

The Judge concluded that this resulted in an assessment of the parties' respective 'contributions' over the course of their 22 year marriage to be **52.5/47.5** in the husband's favour.

Assessment of **Future Financial Needs** when there are no longer any dependent children.

The husband's relevant 'future financial needs' circumstances were as follows:

- aged 46
- healthy
- gainfully employed on a high income with good prospects; and
- a history of being a regular recipient of substantial (albeit) discretionary family trust distributions.

The wife's relevant 'future financial needs' circumstances were as follows:

- aged 44
- poor health
- limited (but not non-existent) employment prospects
- currently a recipient of a disability pension; and
- in a personal relationship of indeterminate status (ie she denied the husband's allegations that she was living in a de facto relationship and/or engaged and the Judge was unable to make a finding of fact on the issue).

The Judge concluded that these factors entitled the wife to a further substantial adjustment of **25%** to address her 'future financial needs' leading to an outcome in which the Court finally ordered that the family's net matrimonial assets be divided in the proportions of **27.5/72.5** in the wife's favour (ie $52.5 - 25 = 27.5$ and $47.5 + 25 = 72.5$).

The capacity of a favourable (or an unfavourable) 'future financial needs' assessment to significantly tip the balance of a matrimonial asset division should not be underestimated.