Can Personal Lifestyle Choices Reduce the Value of Matrimonial Contributions ?

In **Werner [2013] FamCA 341** after a 26 year relationship the wife claimed that when it came to assessing the parties' respective contributions as part of the property settlement process, adverse findings with financial consequences should be made against the husband because of his dissolute lifestyle.

It was submitted on behalf of the wife that the Court should conclude that the husband's smoking, gambling and drinking during the years he was operating the family's manufacturing business led directly to the loss of the business as an asset of the marriage and that such conduct was so reckless, negligent or wanton that the husband's claim should be reduced in the order of 2-5%.

While the Judge was satisfied on the evidence that the husband was a heavy smoker who enjoyed drinking alcohol and playing poker machines, he could not determine with any degree of certainty the significance of the financial impact of that lifestyle on the economic viability of the business or more generally on the couple's accumulation of property during their marriage.

In the circumstances the Judge could not make any specific findings about the level of the husband's drinking and gambling that could enable him to conclude that those matters should weigh heavily on the process of assessing the parties' respective contributions.

Without factual cause and effect evidence about the financial consequences of lifestyle choices, the Family Court will be reluctant to make judgmental assumptions about what those consequences may have been.

Kim Henderson

MediateFirst

www.mediatefirst.com.au