

Dicing Asset by Asset in a Short Relationship with a Small Pool

In **Tregear & Morphett [2014] FCCA 1854** Judge McGuire dealt with what would have been a classic '**short relationship / small asset pool**' case involving a young de facto couple had he not awarded primary care of the two year old child to the father at the end of their three year relationship.

Needless to say the mother had some issues.

Ultimately the Judge's parenting order means the financial outcome in this case cannot be considered typical of such scenarios. However it is nonetheless instructive.

The parties' net non-superannuation asset pool was very small totalling only \$38K consisting of the net equity in the home and their cars. Their combined superannuation entitlements which totalled about \$70K were mostly in the father's account.

In indicating that he intended to adopt the rarely used 'asset by asset' approach rather than the more preferred 'global' approach for the purpose of determining the financial settlement issues, the Judge set out those factors which he considered justified adopting that relatively unusual method.

The relevant factors to which the Judge referred were:

- the short duration of the relationship being of just less than three years;
- the evidence which indicated that the parties kept their finances separate and to a degree secret from each other;
- acknowledgment by both parties that there had been regular financial contributions and capital injections from the father's parents;
- the assets at the end of the relationship were essentially the same as when cohabitation commenced; and
- each party had been responsible for their own liabilities during the relationship which for the most part were the very liabilities they had each introduced to the relationship.

Nevertheless, even when taking an asset-by-asset approach, the Judge maintained that he was still required to consider the contributions of both parties to each of the assets.

The Judge considered that there should be some recognition of the mother's contributions albeit being significantly inferior to those of the father and summarised the situation as follows:

- the only asset to which the mother made any relevant contribution was the home;
- the mother's limited contributions fell within the nebulous descriptions of being 'financial and non-financial' contributions as well as indirect contributions as a parent and homemaker, however the overwhelming contributions were made by or on behalf of the father;
- the relationship was short;
- the equity in the home was not substantial.

Taking all of these contributions into account the Judge awarded the mother 10% of the equity in the home which amounted to the princely sum of \$6,860 and which presumably went only some small way toward her legal costs.

However given the father had to fund the settlement payment as well as his own legal costs which no doubt well exceeded the payment to his former partner, one can only assume that he would have made a more generous settlement offer long before the Court hearing had this property case not been tacked onto a parenting dispute in which he had a real prospect of emerging as the primary carer.

It should also be noted that had the parenting arrangements been reversed and triggered the 'future financial needs' considerations in the mother's favour, the proportionate asset distribution would likely have been vastly different in the context of such a tiny pool.