

Does a 'Special Skill-Set' Count For Anything ?

In **Malphas [2013] FamCA 324** Stevenson J dealt with a situation involving a 40 year old couple whose marriage began with neither of them having any assets of significance and ended nine years later with:

- a five year old daughter; and
- a net asset pool of \$3.7M.

While the parties were able to agree to parenting arrangements involving the wife being the primary carer and the child spending time with the husband on two out of every three weekends and half the school holidays, they agreed on little else.

Early in 2008 the husband had sold his interest in the successful 'professional services' company he had co-established during the marriage on terms which provided for an initial payment of \$9.75M, a three year employment contract with an annual salary of \$200K followed by a five year restraint ending in June 2015.

Suffice to say the parties had both been profligate with their nouveau wealth in the intervening years before and since their separation, hence the less impressive net figure remaining for the Family Court to distribute.

The husband submitted that an appropriate 'contributions' finding would be 75/25 in his favour on the basis that despite having few tangible assets at the outset, he had brought his unique 'skill set' into the relationship which over a five year period had effectively generated the entire net pool of matrimonial assets.

While the Judge accepted that the husband had devoted substantial skill, effort and time to the business venture and that the funds generated by the business had been the source of the capital invested into the parties' current real estate holdings, he also considered it was equally clear that the wife had:

- fully supported the husband in his business endeavours;
- been substantially involved in the parties' real estate investment activities; and
- been their child's primary carer while the husband was engaged in his business activities.

However the Judge concluded that as the net pool of property was in reality derived almost entirely from the fruits of the husband's business venture, the totality of the wife's contributions did not match the husband's significant contributions which he assessed at 60% compared to the wife's at 40%.

Of course this still left the matter of comparing the parties' future financial needs which the husband conceded warranted an adjustment in the wife's favour. Without much encouragement the Judge conveniently assessed the parties' future financial needs disparity at 10% and arrived at an outcome which provided for an equal division of the parties' assets.

Some would say that given there was always going to be a 'future financial needs' adjustment in the wife's favour, the husband was fortunate the Judge exercised his discretion favourably in relation to the assessment of 'contributions' which led him to conclude that the appropriate division was an equal split.

Certainly it would take a strong level of conviction on the part of the lawyer advising a client in the husband's position that he could confidently expect a favourable 'contributions' weighting in his favour in these circumstances.

Knowing the predilection of the sitting Judge might determine whether or not one presses on with such a 'skill set' submission in similar circumstances.

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