

## For Whom Was That Gift Intended ?

In **Kern [2014] FCCA 1108** a major issue for Judge Riley's determination after a nine year relationship was whether substantial gifts from the wife's family were to the wife alone or to the husband and the wife and depending on her finding in relation to that matter of fact, what was the significance of such gifts.

The parties agreed that, during the relationship, the wife's parents gave the wife a block of land which she claimed as being a contribution by her to the matrimonial pool.

The husband claimed that he contributed to the block of land by paying an unquantified amount of rates from joint funds and by cleaning up the property. The wife said that the "cleaning up" consisted of collecting firewood from the block from time to time.

The Judge considered the husband's contribution to the block was negligible.

The parties also agreed that during the marriage they benefitted from a gift from the wife's parents of \$55K but could not agree who was the intended beneficiary of that gift.

The wife said her parents gave the money to her. The husband said that the wife told him that it was given to "us", meaning the husband and the wife.

While the husband claimed that the wife had told him that the money had been given to "us", he conceded in cross examination that the wife's mother would not have given him any money had he not been married to the wife.

The wife relied on the decision of the Full Court in **Kessey** (1994) where it said:

*a contribution by a parent of a party to a marriage to the property of the marriage will be taken to be a contribution made by or on behalf of the party who is the child of the parent unless there is evidence which **establishes it was not the intention of the parent to benefit only his or her child.***

The Judge confirmed that this statement of principle from **Kessey** remains the law and in the present case, the evidence did not support the husband's claim that it was not the intention of the wife's parents to benefit only the wife.

The Judge rejected the husband's claim that the gift was to both the husband and the wife and concluded that in the circumstances the gifted land and the \$55K were contributions on the wife's account.

The combined total of the parties' relevant assets was about \$900K of which the gifts from and financial assistance provided by the wife's parents during the relationship (of which the land and the \$55K were the most substantial) were worth about \$470K if the land was attributed its current sale value of \$325K.

That was over half of the present value of the parties' combined non-superannuation assets even without addressing the issue of the significantly greater current values of the contributions which had been made by or on behalf of the wife in 2006 and 2007.

With the wife's parents' generosity being the only factor distinguishing the parties' respective contributions or future financial needs, the Court awarded the wife 70% of the pool.