How to spend $200K fighting over a matrimonial asset pool of $659K

Something is wrong with a system that allows a couple in their 30's with four young children to spend over 30% of their asset pool on legal costs over a two year period.

**Preston** [2012] FCWA 6 was a farming case which revolved around the relevance of the husband's initial financial contribution in the form of a farm, the net value of which at the commencement of the parties' relationship exceeded the current value of the family's asset pool in the following circumstances:

- the parties' financial and non-financial contributions during the relationship were equal;
- following the breakdown of the marriage the wife was the primary carer of four young children (three being of this marriage);
- the husband's income earning capacity and ability to support himself as a farmer and contractor was modest as was his capacity to pay child support;
- the wife was unskilled with limited employment prospects living in rented accommodation with 4 children in a small country town; and
- the parties had only a relatively small matrimonial asset pool.

Taking into account the husband's initial financial contribution the Court assessed the parties' respective overall financial and non-financial "contributions" to have been 82.5/17.5 in his favour.

However this "contributions" based assessment was substantially offset by the wife's significant "future financial needs" referrable to the factors referred to above which the Court considered justified a 25% adjustment in her favour. This led to an overall division of the parties' total asset pool in the proportions of 57.5/42.5 in the husband's favour.

Before the Court reached this conclusion the parties had between them managed over two years to spend $200K in legal costs while arguing, largely unproductively, about issues such as:

- what exactly was the farm worth when the parties commenced cohabitation eight years before separating;
- what were the husband's father's motives for putting the farm in the husband's name when the son was only 13 and the father himself in a problematic de facto relationship;
- how to deal with a purported lease between the husband and his father of a cattle herd worth $40K in circumstances in which the husband had for many years worked for little or no remuneration on his father's farm;
- how the husband's small share portfolio and superannuation entitlements should be taken into account;
- whether it was reasonable for the husband to have borrowed to buy a second hand Commodore after separation to transport the children while in his care; and
- how to value the practical assistance provided by the parties' respective parents.

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