**Is the Valuation Date for Superannuation the Date of Separation or the Hearing ?**

In **Werner [2013] FamCA 341** the wife who was in the stronger financial position submitted that her superannuation should be valued as at the date of separation as the husband could not be said to have made any contribution to it after that date.

In rejecting the wife's submission Judge Forrest noted that it is well established that the Court must consider the property of the parties as at the date of the trial and that superannuation interests are generally treated no differently to other property in this respect.

The Judge went on to say that any submission to the contrary demonstrated a fundamental misunderstanding of what is 'property of the parties or either of them' which can be the subject of property settlement adjustment orders.

The relevance of the post-separation period in the context of superannuation entitlements is not in relation to any increase or decrease in the value of the fund in the post-separation period as much as it relates to the differences in the respective 'contributions' each party has made to the accrual of superannuation both before and after separation.

A superannuation interest should be valued and included in the pool as at the date of the settlement negotiations, or the date of the hearing when negotiations fail, rather than the date of separation.

However it then follows that the value of the parties' respective post-separation contributions to the accrual of the superannuation up to the time of the settlement negotiations or the date of the hearing should also be assessed.

While it may be easy for the Court to conclude that both parties have made similar direct and indirect contributions to the other's accrual of superannuation during their relationship, post-separation circumstances and contributions may sometimes warrant closer examination.

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