

Weighing Up Contributions When They're Simply Overwhelming

In **Zimin & Nickson** [2014] FCCA 206 Judge Brown was confronted with a scenario which involved the following:

- unresolved uncertainty as to whether the relevant duration of the relationship was 4 years or 9 depending on when prior to the marriage their 'boyfriend/girlfriend' relationship morphed into a defacto relationship;
- a significantly older and better established husband who sought to have various assets he introduced to the relationship prior to either of the 'start-up' dates and during the contentious pre-marriage and post-separation periods, quarantined from the matrimonial asset pool;
- the absence of any children; and
- both parties being able to earn similar incomes from personal exertion at the conclusion of the marriage.

While the Judge observed that one of the consequences of a long marriage, with a significant focus on family and the raising of children, is that, over time, disparate contributions have a tendency to even out, with the result that considerations of justice and fairness often lead easily to the conclusion that a percentage assessment of the party's respective '**contributions**' of 50/50 should readily be made, he pointedly observed that this was not one of those cases.

However he also noted that the task he was required to undertake involved being informed fundamentally by considerations of equity and fairness, in the specific context of the relationship between the two parties concerned, which even though not of many years in duration, in terms of its financial noteworthiness, was still a significant step for them both and one to which both were committed, following a period of long standing intimacy between them.

In this context, the Judge was concerned not to unwittingly under-estimate or be dismissive of the wife's contributions, which had not necessarily added to the parties' store of total wealth in dollar terms, but which were nonetheless significant within the context of the marriage between the parties.

At the same time he also recognised that it would be unfair to the husband to unduly discount his significant financial contributions, which dwarfed those of the wife.

Accordingly, at the end of the exercise of comparing the parties' respective 'contributions' and having synthesised the various factors, which went one way and the other, but overwhelmingly in the husband's favour, Judge Brown assessed the parties' various and disparate contributions as favouring the husband in 80/20 proportions.

He was then required to consider and compare the parties' prospective financial circumstances and needs and in particular to consider whether they warranted any further adjustment being made in favour of either party.

After considering the various factors arising under section 75(2) Judge Brown concluded that a modest adjustment, in favour of the wife, was warranted, chiefly as a consequence of:

- the current imbalance in the parties' superannuation holdings; and
- the husband's more advantageous position because of the financial resource represented by the income earning capacity of his farming enterprise in addition to his employment sourced income.

In the circumstances Judge Brown ordered a further 3% adjustment, being made in the wife's favour in recognition of the parties' competing future financial needs factors leading to an order in which the parties' combined net assets of about \$1M, including those the husband had sought to quarantine from the pool, being divided in the proportions of 77/23 in the husband's favour.