

## When Age Matters

The facts in **Blackwell & Trantor [2014] FCCA 1667** had some interesting features which led **Judge Scarlett** to conclude that:

- in this relationship which was of medium term duration, the respective contributions should somewhat unusually, not be assessed as being equal; but perhaps more importantly,
- the difference in the parties' ages at the end of the relationship was a relevant future economic consideration which warranted a significant financial adjustment.

The Husband was born in 1952 and the wife in 1963. They commenced living together in 1998 and separated in 2011. There were no children of the relationship.

The net non-superannuation asset pool was \$793K and the superannuation asset pool totalled \$366K.

While the initial contributions greatly favoured the Wife, by about 65% to 35%, the Judge was unimpressed by the husband's evidence about his contributions and took the unusual approach of further discounting the value of his contributions during the relationship.

The Judge concluded that 'even on a conservative basis' at the end of the relationship the value of the parties' contributions favoured the Wife significantly, to the extent of 70% to 30%.

However that was not the end of the story as the husband successfully argued that there should be a 'future financial needs' adjustment in his favour to reflect his age and the fact that at best he had only four more years of earning capacity left particularly after the termination of his most recent employment.

The husband relied upon the observation in the Full Court decision in **Clauson (1995)** that

*It has long been recognised that in most marriages the most valuable 'asset' which a party can take out of a marriage is a substantial, reliable, income earning capacity.*

The wife aged 51 had a greater current income (\$85K) and future capacity than the 62 year old husband.

Accordingly in the absence of compelling medical evidence on the wife's behalf indicating otherwise the Judge was comfortable in concluding that she was fit and able to continue to work which was a relevant factor in justifying an adjustment in the husband's favour in the circumstances.

The Judge made this finding despite the wife producing a medical report indicating a shoulder injury currently restricted her to light duties but was unlikely to prevent her from working.

On the other hand the husband was unemployed and given his age and employment history his prospects of obtaining further employment were bleak. Furthermore the husband's lack of capital or regular income meant he was likely to be reliant on rental accommodation for the foreseeable future.

While the husband's standard of living and future prospects had deteriorated since the marriage had ended the wife's standard of living had remained the same.

In the circumstances the Judge considered an adjustment of 10% in the husband's favour was warranted producing a 40/60 outcome rather than the 30/70 result he had been confronting after the 'contributions' analysis which in a pool of \$1.16M represented a swing back to the husband of \$116K.