

## When Family Violence Impacts On a Property Division (One View)

In the property dispute of **Devon [2014] FCCA 1566** before Judge Burchardt, the wife sought 80% of the non-superannuation pool whereas the husband argued that she should receive no more than 60%.

When their relationship began neither party had any significant assets.

The wife ceased work when she became pregnant with the first of the four children and was thereafter a fulltime mother and homemaker while the husband conducted the business they had established.

When the matter came before the Family Court after the demise of a long relationship, the husband was aged 52 and the wife who was aged 61 remained the primary carer of the one partially disabled adult child.

In the particular circumstances of this case the 'contributions' and 'future financial needs' arguments were interrelated and overlapped.

The wife's case included a claim based on **Kennon** (1997), which is authority for the proposition that in circumstances where the contributions of a party are made more onerous by the violence of the other party the Court may give weight to that circumstance.

The Judge accepted the wife's evidence that throughout the relationship she was the subject of verbal and physical abuse at the hands of the husband whose short temper meant she lived on tender hooks throughout the relationship. She described a series of significant assaults upon her since the very early years of the relationship including one for which the husband was convicted.

In this case the Judge considered the **Kennon** argument in assessing both 'contributions' and 'future financial needs' as it was a relevant consideration given the difficulties it caused the wife in carrying out her roles within the marriage as well as being relevant to the wife's present health and likely future employability.

In view of the very lengthy relationship between the parties, and the relatively 'workaday nature' of their contributions while they lived together, the Judge considered it would ordinarily have been appropriate to assess the parties' contributions as equal. However in these specific circumstances he was prepared to give the wife a modest 5% 'contribution' loading based on the **Kennon** factors.

However in the context of assessing the parties' respective 'future financial needs', the wife's medical diagnosis of severe depression arising from her traumatic experiences throughout the relationship, which made it unlikely she would return to work, was a significant relevant consideration.

Despite its significance, the Judge considered that the wife's 'future needs' adjustment claim of a further 25% loading in her favour to be 'grossly overstated' notwithstanding the impact of her trauma induced depression, her age and her care of the disabled child on her future employability and cost of living.

While acknowledging that the balancing of all of these issues is ultimately a matter of discretion and impression, it was the Judge's view, taking all of the relevant considerations into account, that there should be a further loading in the wife's favour of 15%.

Hence the Orders provided for the property to be divided 70% to the wife and 30% to the husband.