



Court Ruled in Favour of Spouse's Parent in Marital Property Settlement

Husband satisfies Court under section 78 of the Family Law Act that seven paintings in marital property belonged to husband's mother.

BACKGROUND

In the recent Family Court case of *Sigley & Cullen (NO 3)* [2015] FamCA 825 (5, October 2015), there were three issues that the Courts had to consider:

1. The fair division of the marital property
2. The amount and period of spousal maintenance
3. The legal cost of self-representation as part of settlement

The husband was a 59 year old health professional in private practice with a sole income of \$250,000 after tax. The wife, although a qualified professional, had not worked throughout the marriage and had raised their four children and supported her husband's career. The parties ended their long marriage in 2013. The wife claimed that during the marriage the husband did not disclose the couple's financial position to her.

CONSIDERATIONS

In an attempt to avoid the cost of litigation, the parties agreed to a collaborative legal process which involved entering into a mutual agreement. The process subsequently failed and significant time was lost in the proceedings in federal court and eventually the case was sent back to Family Court. These proceeding also failed to bring about a resolution.

The Court applied two separate sections of the *Family Law Act 1975* (the "Act") in order to meet the legal requirements in this case and achieve fairness to both parties. One section addressed property settlement issues and the other spousal maintenance.

THE PROPERTY

The marital property was valued at \$1.6 million. The wife expressed a strong desire to keep the home as the parties' adult children identified with the property as the family home and regularly visited during weekends and holidays.



There was the further matter which related to seven paintings that were left in the marital property. The husband evidenced that the paintings belonged to his mother and applied to the Court to have them returned to her. The wife stated that she had always assumed the paintings were part of the marital property and as such be shared between her and her husband.

SPOUSAL MAINTENANCE

In relation to spousal maintenance the Court referred to Section 75 of the Act and considered the following aspects for each of the parties:

- Age and state of health amount
- Income
- Property and financial resources
- Physical and mental capacity
- Any responsibility either party had to support the other

The wife self -represented to the Court and requested the husband pay \$72,000 a year for her living expenses and the upkeep of the marital property. The husband offered the lesser amount of \$56,000 per year for a three year period.

The wife believed that her legal fees would be met by the amount received in spousal maintenance. The Court determined that there were sufficient funds in the property settlement for the wife to pay for her legal fees and it would be therefore inappropriate to claim the legal fees as part of spousal maintenance.

CONCLUSION

The Court established that the parties' failed attempt to resolve the matters by mutual written agreement proved costly and caused unnecessary delay. The Court determined that the husband had an obligation to maintain the wife due to a significant disparity in each party's earning capacity. The Court was satisfied that the husband had fulfilled his financial obligation to maintain the wife as he was reasonably able to. The husband agreed to continue the spousal maintenance for a period of three years to enable the wife to undertake further studies which would potentially increase her future earning capacity.

The Court was satisfied that seven paintings kept in the marital property belonged to the husband's mother and ordered that they be returned to her.