

IN THE SUPREME COURT OF NEW ZEALAND
NELSON REGISTRY

Buttsworths
(2)

M 1716

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No Special
Consideration

IN THE MATTER of the Matrimonial
Property Act 1976

BETWEEN [REDACTED] EYMAEL of
[REDACTED]

Appellant

A N D

[REDACTED] EYMAEL of [REDACTED]
[REDACTED]

Respondent

Hearing: 18 June 1979

Counsel: C.N. Tuohy for appellant
D.P. McNabb for respondent

Judgment: 5 NOV 1979

JUDGMENT OF WHITE J (NO 2)

I delivered an interim judgment in this matter on 6 September 1979 in which I came to the conclusion that injustice was likely to result if leave to proceed with the application out of time was refused, but I also stated that, in my view, the position of the respondent ought to be protected. It seemed to me that, having regard to what counsel had said during the hearing, it could be that an indication of my view might be sufficient to determine the case. Some progress has been made as a result of the efforts of counsel. I find the memoranda which have been filed very helpful.

There is a realistic appreciation by counsel that leave simpliciter could lead to injustice. Mr Tuohy for the appellant has submitted that I should decide both the application for leave and the substantive application. There is no dispute between counsel as to that course being followed. Nor is it disputed that, if she is able to do so, the appellant should obtain ownership of the matrimonial home, leaving the respondent in undisturbed ownership of the [REDACTED] property. This leaves the

problem to which I have referred of the appellant's interest in the [REDACTED] property and the value of it which should be reflected in her share in the matrimonial home, thus reducing the amount she will have to pay to the respondent to obtain possession. Again, Mr McHabb agrees that an order within that framework would be appropriate.

It is at that point that there is a difference in the proposals made. I have considered the evidence of the valuers and the rival submissions which put the matter clearly from both points of view. I think that an approach having regard to the provisions of the 1963 statute is a fair one. On the other hand, from the respondent's point of view, I think the evidence shows that, while inflation has played its part, improvements have played a very significant part in the increase of the value of the [REDACTED] property since separation. I think I should add that if the matter were considered under the provisions of the 1976 Act there is a wide discretion to see that justice is done in applying s 2 (2) as interpreted by the Court of Appeal in Meikle v Meikle (1979) 1 NZLR 137.

I agree with Mr Tuohy that, having granted leave to proceed, an appropriate order would be to give the appellant the right to purchase the [REDACTED] property within a reasonable time and that the amount payable to the respondent should be on the basis of equal sharing of the matrimonial home and an allowance to the appellant based on the appellant's contribution to the [REDACTED] property. I fix that at \$5,500. These conclusions should be sufficient to determine the application but as the case is now being dealt with at a distance I reserve leave to either party to apply for and submit a draft order, and memoranda may be filed. There will be no order as to costs.

Patricia G.

Solicitors for the appellant: Fletcher & Moore (Nelson)

Solicitors for the respondent: Hunter, Smith & Co (Nelson)