NZLR 2-1/2

IN THE HIGH COURT OF NEW ZEALAND M. 1214/81

AUCKLAND REGISTRY

63

IN THE MATTER of the Matrimonial Property Act 1976

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IN THE MATTER of a question as to title and possession of property

BETWEEN M RICHARDSON

APPLICANT

A N D N RICHARDSON

RESPONDENT

Judgment: 15 February 1984

Hearing: 1 February 1984

Counsel: Honoria Gray for Applicant
A.C. Wright for Respondent

JUDGMENT OF CASEY J.

The parties were married on 1956 and separated in July 1969 when Mr Richardson left the ship on which he was serving in Australia. There were three children then aged According to the Applicant he effectively deserted his family, although he says that contact was never finally lost. However I am satisfied that he took virtually no interest in them and the wife was left to fend for herself and bring up the children on a Social Welfare benefit supplemented by earnings in part-time work. In 1959 they built the matrimonial home on leasehold land, exercising their option to purchase for $1,900. The capitalised family benefit for one child provided $917.50 towards the price and the wife paid the balance of $77.34 to complete the purchase in September 1969. The house itself cost $6,000, and they contributed $2,000 from joint savings and obtained a State Advances Corporation mortgage of $4,640, of which $3,588.82

was owing for principal when they separated. Since then the wife has met all the outgoings and has maintained and improved the property. On 1979 she started the full-time employment in which she is currently engaged and her benefit ceased.

In 1971 Mrs Richardson obtained provisional maintenance orders for herself and the children but these were not confirmed in Australia because she says she did not know her husband's address and they could not be served. However an effective order was made in 1977, and in 1979 he filed an application for dissolution of marriage in Australia and started paying maintenance until July 1981. There is some confusion about this in the affidavits but I gather from Counsel that the husband was paying $A.60 per month to the Social Welfare Department, which seems originally to have retained the total of $2,002 received against arrears under the District Court order made in 1977, but subsequently paid it all to the wife, after July 1981. She deposed to spending $9,235.36 on improvements to the home, the cost being shared with her older son under an arrangement in lieu of board and they both carried out most of the work involved. I share Mr Richardson's surprise at her estimated total of 7,000 hours.

In October 1979 the marriage was dissolved and there were inconclusive discussions about a matrimonial property settlement. The wife obtained leave to bring this application out of time and it was filed in September 1981. In it she seeks an order for exclusive possession of the former matrimonial home and orders in respect of it and its contents. There is no dispute that the latter belong to her, and no claim to any other chattels. Nor is there any suggestion of other than equal sharing of the home, and the only issue is whether I should exercise my discretion under s.2(2) of the Act to value it at some date earlier than the date of hearing, and make appropriate adjustments between the parties.

This question was discussed by the Court of

Appeal in Meikle v. Meikle (1979) 1 NZLR 137, and while a hearing-date valuation is the rule, there is an unfettered discretion to depart from it to attain a just result, having regard to the Act's manifest intention that generally the parties should share the matrimonial home and chattels equally. The circumstances of this case fall within the mainstream of those decisions analysed by Cooke J. and cases since Meikle, in which Judges have selected an earlier valuation date in order to do justice to a deserted spouse whose sole efforts since separation have preserved the family and the property. I do not regard the small sums of money belatedly paid to the Social Welfare Department by Mr Richardson between 1979 and 1981 as having any real bearing on this situation. They came after the wife had started full-time work and her benefit had ceased, and when only the youngest child (then 14) was dependent on her. In any event she did not receive it until later. One can only speculate on his reasons for starting to pay maintenance at that late stage.

Although Mr Wright submitted that the facts of desertion were not as extreme as in some of the reported cases, nevertheless they are of sufficient substance to warrant the exercise of my discretion under s.2(2). Mrs Richardson was left to her own resources for some 14 years, covering the most expensive period of raising the family. It takes little imagination to appreciate the difficulties she must have experienced in keeping up the outgoings on the property and maintaining it. When things became easier after she started full-time work she was able to embark on the improvements for which Mr Wright agrees she should get credit.

Mrs Gray asks me to order an equal division based on the 1969 valuation of about $12,000. The current market value is some $60,000 (taking the mean of the valuations submitted) and it is clear that much of this is due to inflation and the general rise in property values, especially since 1981. The marriage partnership lasted 13 years and I think the husband is entitled to some of the increase in value

of the share to which his contribution over that period entitles him. While it is true that without the wife's post-separation efforts the property would not now be in existence for him to benefit, nevertheless Mr Wright submits that if she can be suitably compensated for them, there is no injustice in awarding the husband the gratuitous increment attaching to this share. This was the approach taken by the majority of the Court of Appeal in Meikle, but they sounded a note of caution against paying the deserted spouse twice over. This may be relevant to the husband's liability for arrears of maintenance and to the belated payment of $2,000 received by Mrs Richardson after 1981. Cooke J. was prepared to allow something for a deserted spouse's efforts in keeping the family together on her own, as well as for her direct efforts in preserving the property, and Mr Wright referred me to a decision of Cook J. in the High Court - Davis v. Davis (1981) 5 MPC 24 in which he allowed $1,500 under this heading. However, Richardson J. in Meikle's case felt that the only matters in respect of which the discretion under s.2(2) could be exercised were those having a bearing on the value of the property itself.

In a number of cases to which I was referred, the Courts have fixed the valuation at the date of separation and made no allowance for any subsequent increase in value. One can see the justice of this where a deserting husband simply disappears after a relatively short marriage and leaves his wife and family to their own devices. This is effectively what happened here for many years, but the parties did live together for 13 years during which the foundation of their matrimonial property was laid. It may do less than justice between them - which, after all, is the purpose of the Act - if I deprive Mr Richardson totally of the benefit of any increase in value of his share. On the other hand it would be manifestly unjust if after all these years, during which he showed not the slightest interest in his family or the property, Mrs Richardson had to pay him an equal share of the present value of the fruit of her prudent management and expenditure of time and money in preserving and improving it. Section 2(2) is available to do justice between the parties in exactly this situation.

If an order for division had been made at the time of the separation the property would have remained as a home for the wife and children until at least T _ turned 16 in Consequently the husband's interest would have been frozen over that period and while the wife would have enjoyed the use of his share, it can be regarded as partly in satisfaction of his maintenance obligations towards her and the children, and she has been responsible for maintenance and outgoings as well as for the principal reductions under the mortgage. Taking a mean of the evidence and rounding the figure up, I fix $12,000 as the value of the home at the date of separation. As Mrs Richardson is obtaining the benefit of s.2(2) because of the post-separation contributions she made, I am not prepared to accept Mrs Gray's submission that she is also entitled to an allowance for them, deducted before calculation of their equal shares, and Mr Richardson is entitled to $6,000. From the end of July 1981 (when T attained 16) I think he should receive an allowance of 10% simple interest to the date of payment to reflect in some degree the inflation accruing to his share. If necessary I will make orders accordingly but I imagine that the parties may now be able to settle the outstanding matters themselves. Leave will be reserved to either to apply for such further orders or directions as may be necessary to give effect to this judgment. There will be no order for costs, but I gather that Mrs Richardson is liable for the valuation reports obtained and annexed to the affidavits, and I direct that the cost of these be shared equally.

McCasey J.

Solicitors:
Honoria Gray, Auckland, for Applicant
Wilson Wright & Co., Auckland, for Respondent