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IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

M.189/76

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BETWEEN M BLOWS and N
BLOWS as trustees
in the Estate of D HORTON
Applicants

A N D F WILLOUGHBY and
P GORRINGE as
trustees in the Estate of
F HORTON
Defendants

Hearing: 8 August 1984

Counsel: P.H. Cooney for Applicants
E.J. Hudson for Defendants
C.J. Rushton for Residual Beneficiaries

Judgment: Delivered 17 AUG 1984

T.J. McGroary
T.J. McGROARY
Deputy Registrar

JUDGMENT OF GALLEN J.

This is an application under the provisions of the Matrimonial Property Act 1963. Mrs D Horton who was then a widow, married F Horton on 1949. Before the marriage, Mrs Horton had been possessed of several areas of land at Te Puke and Mount Maunganui. The Mount Maunganui property was effectively purchased from the proceeds of sale of land at Te Puke and until her marriage with Mr Horton, Mrs Horton resided in the Mount Maunganui property. In the Mount Maunganui property was sold for 2,300 pounds. There is some doubt as to what happened to the proceeds of that

sale. In her initial affidavit, Mrs Horton indicated that she did not personally receive the proceeds. She says that on the day these were forwarded, she was in fact in hospital and she indicated that she believes the proceeds of sale went directly to Mr Horton and were placed in a bank account in his name and were used to purchase assets.

After their marriage, Mr and Mrs Horton lived in premises owned by Mr Horton at Street, Tauranga. Mr Horton owned not only this property but also another property which appears to have been let as flats. Mrs Horton indicated in her affidavit that during the course of the marriage she received only minimal contributions towards housekeeping from Mr Horton. She says that the amounts so paid were completely inadequate and apart from being required to budget carefully, to assist with finances she took in dressmaking work and also between 1960 and 1965 took employment in hospitals as a cook and kitchen hand. As a result of an accident which occurred in 1965, Mrs Horton was unable to work further. She also claims that she made contributions to the assets of the deceased F: Horton by making improvements to the matrimonial home at Street. These included structural changes to windows and benches, painting, the purchase of new furniture and the payment for carpeting. She also, according to the evidence of her daughter, made improvements to the flat properties owned by Mr Horton in Street. These improvements included painting, window

cleaning, the making of curtains, varnishing and the purchase of various items of equipment for the flats. The valuation which was provided suggests that at the date of death of Mrs Horton the flats were in poor condition, but there is no direct contradiction of the claims made by or on behalf of Mrs Horton and on the evidence before me, I accept that she did make the improvements and contributions claimed.

There is also evidence that Mrs Horton made substantial contributions in respect of the ordinary household obligations which one would have expected from a person in her position. There is a suggestion that Mr Horton himself did little in the house, was inclined to be at least careful with regard to money and expected Mrs Horton to meet her own expenses from her own wages. Mr Horton died on 1975.

The marriage between Mr and Mrs Horton lasted for It must therefore be regarded as a reasonably long marriage. Mrs Horton herself died on 1977 and these proceedings have been continued by the trustees in her estate. By his Will, Mr F Horton left Mrs D Horton a legacy of \$2,000. To members of Mrs Horton's family he left further legacies totalling \$1,000. The rest of his estate was left to provide a life interest to his widow and after her death the sum of \$250 was to be paid to the Western branch of the Kings Empire Veterans; the sum of \$5,000 each was to be paid to two children of Mrs Horton and the residue of the estate was to be held for the Northern Association Masonic Trust Board.

As at the date of death on 7 December 1975, the net value of Mr Horton's estate was \$62,562.90. The largest single asset in the estate was the real property - the house in Street and the flats, but there was also \$10,557 in cash and various loans and shares. The net value of the estate of Mrs Horton as at the date of her death was \$12,575, not including any interest in Mr Horton's estate. It is against this background that the claim must be considered.

The emphasis in determining shares and interests under the provisions of the Matrimonial Property Act 1963 was the assessment of contributions in relation to the assets accumulated and under consideration. The authorities establish that the value of contributions was ultimately to be translated into monetary terms and not to be downgraded when making a comparison between contributions of a monetary nature and those which were not. In this case in one way or another, Mrs Horton made direct monetary contributions to the matrimonial partnership in the same way as Mr Horton brought his properties to the enterprise.

I do not have available to me evidence to indicate the comparative value of the parties' assets at the date of marriage, but it does seem likely that Mr Horton's were greater. I note however that this cannot be determined from a comparison of the estates since Mr Horton's estate contained real properties which would have reflected inflationary increases. There is ample evidence on the file to indicate that subsequent

to the marriage Mrs Horton made substantial contributions by way of what she made available for housekeeping purposes and the direct assistance she provided in respect of Mr Horton's properties.

The emphasis on equality which appears in the Matrimonial Property Act 1976 was not contained in the 1963 Act and the divisions which took place in cases under that Act tended to reflect the inequality of opportunities to make financial contributions. The husband as financial provider was in a privileged position in that respect. With changes in society, it has become apparent that a movement towards equality was occurring and the decision of the Privy Council in Haldane v. Haldane (1976) 2 N.Z.L.R. 715 made it clear that the original approach of Woodhouse J. in Hoffman v. Hoffman 1965 N.Z.L.R. 795 which tended to equate the efforts of the parties without giving an undue weight to monetary contributions, was correct. In this case, while it may be that the initial provision of partnership capital was unequal, the evidence is to the effect that the subsequent contributions by Mrs Horton outweighed those of her husband. The marriage lasted for

Having regard to that and all the other circumstances revealed on the affidavits, I consider that an order should be made in favour of Mrs Horton's estate on the basis that she would have been entitled to 50% of the assets contained in the estate of the late Mr Horton.

Credit is to be given for the \$2,000 legacy. Some suggestion was made that Mrs Horton's daughter has had the advantage of accommodation in the estate property and that this should somehow be taken into account. The claim is brought by the trustees of Mrs Horton's estate. I do not think that any provision made for her daughter should properly reduce any amount to which her estate is entitled and in any event, the evidence does indicate that Mrs Horton's daughter accepted a responsibility for looking after her mother and stepfather at a time when their physical requirements were great and her efforts in this regard were no doubt properly considered as giving rise to obligations which were met by the accommodation she enjoyed.

The applicants will therefore be entitled to an order determining the share of the estate of the late D. Horton in the estate of F. Horton, deceased, as being 50%, after giving credit for the legacy of \$2,000 provided in favour of the said Dorothy Grace Horton by the Will of the said F. Horton.

The applicants are entitled to costs from the estate they represent and I assume that the defendants are entitled to charge in respect of the services rendered to the estate of F. Horton. Having regard to the circumstances, I do not consider it appropriate there should be any order for costs - each party should bear their own.

Leave is reserved to any party to apply in respect of any other matter which requires determination.

RDD alk

<u>Solicitors for Applicants:</u>	Messrs Cooney, Lees and Morgan, Tauranga
<u>Solicitors for Defendants:</u>	Messrs Tompkins, Wake and Company, Hamilton
<u>Solicitors for Residual Beneficiaries:</u>	Messrs Vialoux and Vialoux, Auckland
