

N2LR

473

No Special
Consideration

BETWEEN

COX of
Auckland, formerly
, now

Appellant

A N D

Auckland, COX of

Respondent

M. No. 565/83

BETWEEN

COX

Appellant

A N D

COX

Respondent

Hearing: 10th April, 1984.

Counsel: A. C. Roberts for Mrs. Cox.
I. F. Williams for Mr. Cox.

Judgment: 7 May 1984

JUDGMENT OF TOMPKINS, J.

Both parties have appealed against the judgment of the Family Court delivered on the 8th April, 1983. I shall refer to the parties as husband and wife.

They married on the 22nd December, 1979. They separated on the 13th August, 1982. Hence this was a marriage of short duration to which s.13 of the Matrimonial Property Act, 1976, ("the Act") applied. The parties had known each other for some three years prior to marriage, during part of which they had lived in a de facto relationship. They have no children. A daughter of the wife's, S , lived with the parties during the marriage. A son of the husband's, K , lived with the parties during the latter part of the marriage.

Prior to the marriage the parties entered into a deed pursuant to s.21 of the Act. It recorded the husband's separate property as follows:-

1. Credit balance with the A.N.Z. Savings Bank \$8,000
2. Personal insurance with the A.M.P. totalling \$60,000 with a surrender value of \$10,000
3. Superannuation with the husband's employers
4. Boats
 - (a) Fleetline 17 ft. 6 inches with Evinrude 85HP motor \$6,500
 - (b) Two yachts 1,200
5. All interests in the company by whom the husband was employed.
6. All property which the husband may acquire whether by gifts, succession or survivorship or otherwise from his parents.

The wife's separate property was listed as:-

1. A 1969 Morris 1300 motor car \$1,500
2. All savings in bank accounts or otherwise at marriage
3. Surrender value of all personal insurance policies at marriage
4. All furniture and chattels owned by the wife and situated at Woodbridge Lane.

The assertion by the husband in the deed (repeated in his affidavits) that he had \$8,000 in the bank at the date of marriage was untrue. The value of the Fleetline boat of \$6,500 was overstated. It was sold for \$4,000 and the proceeds used to repay the husband's bank overdraft which existed at marriage.

At the date of the marriage the wife owned the property to which I have referred at 3, Woodbridge Lane, Milford. It was here that the parties had lived together prior to marriage. The learned Family Court Judge held that the husband had made himself responsible for, or paid out, \$1,500 towards improvements effected on this property.

Shortly after marriage the parties decided to purchase a home at Cliff Road, Takapuna, for \$70,000. The wife agreed to this on the basis that the equity from her Woodbridge Lane property would go into the Cliff Road property and, of course, she also anticipated that the husband's (non-existent) cash of \$8,000 would be used. Because this latter sum did not exist, it became necessary to raise additional finance. In the end the purchase was financed as follows:-

1. \$10,205 being the equity on the sale of the Woodbridge Lane property.
2. A.M.P. first mortgage of \$30,000.
3. A.N.Z. bank second mortgage of \$20,000.
4. Public Service Investment Society third mortgage of \$3,000.
5. Vendor finance \$4,500.
6. Cash contributed by the parties \$2,291.

Of this latter sum the husband contributed \$1,500. The husband also paid \$1,096 legal fees on the purchase.

At the time of the hearing in the court below, the matrimonial home at Cliff Road had not been sold. By the time the appeals were heard it had been. The amount available for division between the parties from the sale of the home was agreed to be \$71,710.92.

The property that was the subject matter of the application in the Family Court consisted of:-

1. The Cliff Road matrimonial home.
2. Family chattels.
3. A Clubman estate motor car in the possession of the wife.
4. A horse in the possession of the wife, valued by the learned Family Court Judge at \$600.

The learned Family Court Judge came to the conclusion that the contribution of the wife to the purchase of the matrimonial home was in a very significant measure much greater than the husband's contribution. He was satisfied that the contribution of the wife to the marriage partnership has clearly been disproportionately greater than that of the husband. In any event, if he were not so satisfied, he would be prepared to hold that there were extraordinary circumstances (relating to the false statement by the husband concerning the \$8,000 in the bank account) within s.14 of the Act.

Although earlier in his judgment he referred to \$1,500 being contributed by the husband towards the Woodbridge Lane property, in the latter part he put that figure at \$3,000. There certainly appeared to be evidence that would justify a finding that the latter figure was correct.

The learned Family Court Judge directed that the matrimonial home should be sold and that from the sale price should be paid -

To the wife:

- (a) The amount of the deposit arising from the sale of Woodbridge Lane.
- (b) The net amount paid to the A.M.P. including interest by the applicant.

- (c) The net amount paid including interest to the Public Service Investment Society.
- (d) The sum of \$1,500 paid to the fourth mortgagee.

To the husband:

- (a) The net amount paid including interest on the A.N.Z. mortgage.
- (b) The \$3,000 paid in respect of the Woodbridge Lane improvements.

The balance, after repayment of all mortgages and costs to be paid to the parties in proportion to the total amount paid by each as his or her contribution to the property bears to the amount paid by the other party. That is to say, that all the sums paid or contributed by the applicant shall be made as a proportion to all the sums paid by the respondent.

He then made an order in relation to the furniture, to which I shall refer later.

He then made an order concerning the horse, to which also I shall refer later.

He made no order concerning the Clubman car.

Both parties submitted that the learned Family Court Judge's method of dividing the proceeds from the sale of the matrimonial home was incorrect because it was based entirely on a mathematical basis calculated from the actual contributions by the parties to the asset. They submitted - and I agree - that the proper approach, pursuant to s.13(2), was to assess the share of each spouse in the matrimonial property determined in accordance with the contribution of each to the marriage partnership. This, of course, should be done in accordance with s.13 of the Act since it was undisputed that this was a marriage of short duration.

Counsel for both parties were also agreed that the contribution of the wife to the marriage partnership was clearly disproportionately greater than that of the husband. Therefore the wife's contribution to the marriage partnership is greater than that of the husband. It was submitted on behalf of the wife that her share in the matrimonial property should be assessed at 70% based on her contribution to the marriage partnership. It was submitted on behalf of the husband that the wife's share in the matrimonial property based on her contribution to the marriage partnership should be assessed at 55%.

I agree with the view taken by counsel for both parties and by the learned Family Court Judge that the wife's contribution to the marriage partnership was clearly disproportionately greater than that of the husband. In my view this arises primarily from the substantially greater contribution to the matrimonial home that the wife was able to make as the result of her owning a substantial equity in the Woodbridge Lane property. Even allowing for the contribution that the husband made towards that property, it was really the equity in that property alone that enabled the parties to purchase the matrimonial home. Apart from the husband's contributions of \$1,500 towards the deposit, and \$1,096 towards the legal fees, the whole of the rest of the purchase price was borrowed.

Both parties were working throughout the period of the marriage. No accurate evidence of their respective earnings was provided, but it is apparent that there was not any significant disparity between them.

The husband assumed responsibility for meeting the payments due on the second mortgage to the A.N.Z. Bank.

The wife assumed the responsibility for meeting the payments due on the first mortgage to the A.M.P., and the third mortgage to the Public Service Investment Society. The fourth mortgage was repaid as to \$2,500 by the husband and \$2,000 by the wife.

I do not find any significant difference in the contribution to the marriage partnership made by the parties in connection with the management of the household and the performance of household duties. It appears as if the husband spent some considerable time caring for Suella. This was because the wife undertook shift work which affected the extent to which she was able to be involved in looking after Suella and manage the household.

Taking into account all of these factors, it is my conclusion that the share of the wife in the matrimonial property should be assessed at 60% and of the husband at 40%.

Based on those shares I make the following orders:-

(1) Proceeds from the matrimonial home:

Each party should receive credit for capital payments that either has made in respect of the mortgages on the matrimonial home between the date of separation and the date of sale. The balance of the net proceeds from the sale should be divided 60% to the wife, 40% to the husband.

(2) Furniture:

I adopt the same approach as that adopted by the Family Court Judge, namely -

- (a) All furniture that belonged to the wife at the date of the marriage belongs to her still. If it is in her possession she shall retain it. If it is not, then it shall be returned to her by the husband.

- (b) All furniture that belonged to the husband at the date of the marriage belongs to him still. If it is in his possession he shall retain it. If it is not, then it shall be returned to him by the wife.
- (c) A still life picture, some family plates, and half the lamps which had been purchased for the house and not used should be returned by the wife to the husband.
- (d) All other items of furniture or household chattels which were acquired during the marriage shall either be apportioned by agreement or shall be sold and the proceeds shared on the basis of 60% to the wife and 40% to the husband.

(3) The horse:

This shall be retained by the wife. Its value is assessed at \$600. The wife should pay to the husband \$240, being 40% of that value.

(4) The Clubman estate car:

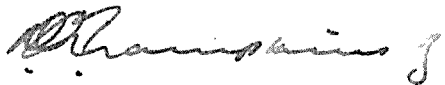
This is to be retained by the wife. I fix the value at \$5,000. It was common ground that there was a loan from the husband's mother of \$1,000 towards the purchase price of this car. It was also established that the 1969 Morris 1300 motor car which, by the deed, was agreed to be the wife's separate property, had been sold and the net proceeds of \$1,000 had indirectly gone to the purchase of the Clubman car. These two amounts cancel each other out. They leave \$3,000 to be shared. Hence the wife should pay to the husband \$1,200.

(5) Leave reserved:

As was done in the Court below, I reserve leave to both parties to apply to the Family Court for further directions if required.

(6) Costs:

In all the circumstances I do not consider that there should be any order for costs on the hearing of this appeal.



Solicitors:

Raymond S. Walker, Auckland, for Mrs. Cox.
Shieff, Angland, Dew & Co., Auckland, for Mr. Cox.