

22/11

NZCR

**LOW
PRIORITY**

IN THE HIGH COURT OF NEW ZEALAND
BLLENHEIM REGISTRY

M11/89

1794

IN THE MATTER of the District Courts
Act 1947

A N D

IN THE MATTER of an Appeal against a decision
given in the District Court
at Blenheim on the 29th
day of March 1989 in a Matrimonial
Property Application

BETWEEN

JACKSON

Appellant

A N D

JACKSON

Respondent

Hearing: 17 November 1989
Counsel: M.J. Hunt for Appellant
M. Hardy-Jones for Respondent
Judgment: 17 November 1989

JUDGMENT OF ELLIS J

This is an appeal against a decision of the Family Court on an application by the appellant to set aside a matrimonial property agreement. The decision appealed from was delivered on 29 March this year and the appeal was lodged within a month. Since then no action has been taken, this matter appears to have been presented to Mr Justice McGechan and was then before me in July. No steps have in fact been taken by the appellant since the appeal was filed and the matter is now before me to speed its disposal.

Mr Hunt appears on the shortest of instructions, notwithstanding the fact that the solicitor for the appellant has had ample notice of this hearing. This situation can also be viewed against the apparent conduct of the appellant in dealing not only with the farm property in years gone by, but also in his dealing with the valuable ketch which was matrimonial property at the time of the decision in the Family Court as far as I can see, but has since been sold by the husband to buy a farm in Otago, which is now without equity. While of course I have not heard evidence on the matter, all this seems to indicate a lack of desire on the part of the appellant to proceed and also a desire to delay finalising the wife's entitlement, which on the basis of the present judgment would entitle her to some \$90,000, so I am told from the bar.

Under these circumstances, Mr Hardy-Jones intends to file an application to dismiss the appeal for want of prosecution. I direct that the file be transferred to Wellington for the purpose of hearing such application. I direct that it shall not be heard before the 11th of December. This will give the appellant time to give his solicitors' firm instructions. If as Mr Hunt indicates these instructions include an application for leave to adduce further evidence, then that application together with affidavits of the evidence to be called, are to be filed and served by 4 December. The Court will expect Mr Phillips to appear either personally or give full instructions to agents to appear for him and those agents are to be fully briefed as to the disposal of the appeal.

On this appearance the respondent will be entitled to costs which I fix at \$250, to be paid in any event.

ANDREW J
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Solicitors:

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