



Eatons

Divorce Settlements Must Be Fair

When the financial arrangements are being made on divorce, the court must ask itself whether these are fair and do not discriminate against one party bearing in mind all the circumstances

Recently, a woman appealed to the Court of Appeal regarding the orders for ancillary relief (as they are known to lawyers) made for her benefit following her separation from her husband. The couple had married in 1992 and had a child that year. They separated twelve years later.

The wife had inherited a substantial sum which the couple lived off without working for the first five years of their marriage. In 1997 they used her capital to set up a car wash business, which the husband ran, paying a below-market rent to his wife.

When they separated, the couple's assets were valued at a little under £1.4 million, which included the car wash business. The judge concluded that the yardstick of equality was applicable to the division of the assets and ordered the transfer of the building housing the car wash to the husband.

The wife had argued that her husband's misconduct had been so grievous as to justify departing from the normal 50:50 split. Indeed, she argued that his application for ancillary relief should be rejected altogether. This argument was rejected on the facts in the lower court, as was her contention that since she had introduced all the assets to the marriage, they did not constitute 'matrimonial assets' for the purposes of making an equitable division. She appealed to the Court of Appeal.

In the Court of Appeal, it was held that the assumption of equality of division of assets could only be departed from if there were a good reason for so doing. In the present instance, the assets had been disproportionately brought into the marriage by the wife. Whilst it made sense that the ex-husband should be able to continue in business, this did not mean that the property he let should be transferred to him.

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The Court therefore concluded that the ex-husband should be allowed to continue to occupy the premises, paying rent at half the present market rate, and that on the sale of the premises, the money received should be divided equally. The judge declined to transfer the car wash premises into joint ownership because to do so would have adverse tax consequences.

In practical terms, the decision split the family assets so that approximately two thirds remained with the wife.

“The judge made the point that each case must be dealt with on its own facts and that this case did not set a precedent,” says Liz Williams. “It is instructive to note that as is normal, arguments relating to the conduct of the husband were not considered relevant.”

**Contact us for advice on all family law issues on
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