



Eatons

Family Gifts Part of Marital Assets

When couples divorce, their assets can be considered to arise from two sources. There are the assets created during the marriage, which are called ‘marital assets’, and those which are brought into the marriage by the spouses individually, termed ‘non-marital assets’.

The normal assumption is that marital assets will be divided more or less equally, but that assumption does not hold as regards the non-marital assets. Needless to say, there is often a dispute over whether assets are marital or non-marital.

Recently, a man appealed against an order which ‘ring-fenced’ assets that had been given to his ex-wife by her family. These were regarded by the judge as non-marital assets and, as such, not to be divided equally between the couple. The assets had been held in the wife’s sole name. She had not worked for many years in order to look after the couple’s two children, who are now adults.

The husband had continued to work and had acquired various assets. His wife had received £70,000 from her father and a further £12,000 from an inheritance. She had used this money to reduce the mortgage on the couple’s property. She also owned a 50 per cent share in her parents’ home and had been given an investment bond worth in excess of £114,000. Her ex-husband believed that she would inherit the bulk of her parents’ estate, said to be worth more than £1m.

At the end of their marriage, the husband was retired. He was earning about £5,000 per annum and also had a pension. His wife was working at a school, which gave her free board as well as a wage of £1,000 per month. The judge ruled that the couple’s assets, which now included two houses, should be divided equally, except for the bond and the share in her parents’ home, both of which were reserved for the wife.

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The husband argued on appeal that this was unfair. He claimed he had introduced assets at the start of the marriage and had made the major contribution to the creation of the assets of the marriage. He also claimed that the judge had failed to take proper account of his wife's expectations with regard to her parents' fortune. The Court of Appeal accepted these arguments in part.

On the question of the expected inheritance, the Court could not agree that the husband had suffered any loss that needed to be compensated for, especially as his ex-wife's parents were free to direct their estates in whatever way they thought best. However, the Court agreed that ring-fencing the wife's other assets was unjustified.

For advice on all aspects of family and matrimonial law please contact Liz Williams on Tel: 01274 728 327.

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