

5 things you should know about 'family law'

Assets Post Separation

Wealth or assets obtained by one party after separation are not necessarily excluded from the pool of assets to be divided between separating parties. It may be in one party's interests to resolve legally a financial settlement with their former partner as quickly as possible after separation to exclude and protect future assets from a claim.

In the case of *Farmer v Bramley* the parties married in 1984 and separated in 1995. They divorced in April 1997. During the marriage they had acquired very little assets of value. In the early part of the relationship, the husband had suffered drug related problems, and during that time he had been supported both financially and emotionally by the wife. There was one child of the relationship.

In September 1996, after separation, the husband purchased a lottery ticket and won \$5million. Both at first instance and on appeal, the Court took the view that its task was to assess the parties' respective contributions from the start of the relationship until the time of the final hearing, and give weight to those contributions as is appropriate in the circumstances of the case. Ultimately, the wife was awarded \$750,000 despite the fact that the Lotto winnings came into the husband's possession after separation and after the wife had remarried.

In determining what an appropriate property settlement in any case would be, the Court must in general terms follow a four step process:

- Identify and value the assets of the parties as at the date of the hearing
- Identify and assess the contributions made by each party during the relationship.
- Consider whether each party's contribution based entitlement under step 2 should be adjusted having considered the factors listed in section 75(2) of the legislation.
- Be satisfied that the result is just and equitable in all of the circumstances of the case.

In this case, the wife's contribution as parent, homemaker and income earner during the period that the husband was affected by heroin may have influenced the ultimate result in the case. What is clear from the Full Court's decision is that the wife's ongoing care of the child of the relationship, and the disparity in the parties' financial circumstances as at the date of the final hearing [brought about primarily because of the Lotto winnings] were relevant factors under section 75(2) of the Family Law Act. The Court ruled that those factors in this case warranted the wife receiving part of the money the husband had acquired after separation.

This case highlights the importance of parties finalising and legally formalising a property settlement between them after separation. Parties may reach agreement between them as to a division of assets after separation. Unless that agreement is legally binding [which can be as simple as completing the requisite paperwork to apply for consent orders to be made by the Court that reflect the agreement], one party may find themselves an unsuspecting recipient of a claim under the *Family Law Act* with respect to assets acquired after separation.

For queries about these or any other family matters please contact Wilsons' family law team on
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