

Family Law Case Update #5: Property

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Gorman & Gorman [2014] FCCA 1358

Coram: Judge Brown

Registry: Adelaide

Facts

- Net assets of \$1,313,772 and Superannuation of \$167,452.
- Husband and wife married in 1986 and had three children, born in 1992, 1996 and 1998. Of the children, only the youngest was still dependent on his parents at the time of the hearing.
- Parties separated under the one roof at the former matrimonial home (property S) between December 2012 and February 2013.
- On 18 February 2013, there was an incident where the wife alleged the husband assaulted her resulting in the Police attending and an intervention order was applied for and granted. This had the effect of the husband leaving the home.
- Husband "jack of all trades" when it came to domestic building and renovation.
- Worked for same employer 27 years and also did his own private work.
- In November 2012, husband had undergone throat surgery to cure sleep apnoea and subsequently fell into depression. Also the husband had his gall bladder removed.
- Wife left paid work force when the parties' first child was born and worked exclusively as a homemaker and parent until the parties' youngest child started school. Since then, the wife had a number of part-time jobs.
- Wife proposed a division of assets of 55/45 on basis that husband will be able to return to full time work.
- Husband had \$150K super, whereas wife had \$30K super.



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- The husband had commenced proceedings suggesting an equal split, but at the hearing suggested his contributions as breadwinner should be assessed as superior and argued for a 60/40 division in his favour.
- During the parties marriage they bought several properties which were sold at a profit "It is Mr Gorman's case that he was the main protagonist behind this enterprise and did a great deal of the building and renovation work required, which saved the parties significant expense"

Para 31

"It is Mr Gorman's case that he was the main protagonist behind this enterprise and did a great deal of the building and renovation work required, which saved the parties significant expense. Often this work was done at weekends or at night time. Further, it is Mr Gorman's case that what work was beyond his skill, he organised and supervised personally, again saving expense for the parties."

- Husband maintained he was not able to return to work, as he was then approaching his mid-fifties and the work he had done in the past had been physically demanding. Husband proposed no adjustment.
- The parties had two investment properties at separation J and F.

57. *"It is the wife's case that the husband has been entirely disingenuous about the renovations at Property F. She believes that he has significantly reduced the value of the property either to spite her or more probably so that he can acquire the property at a significantly reduced value, which he can then recoup by renovating the property and then selling it."*

58. *Although Mr Gorman's formal application does not specify it, his position to the court, at final hearing, is that he wishes to acquire the wife's interests in both the Property F and Property J properties. In these circumstances, it is the wife's case that the husband has a vested interest in ensuring that the value of these properties is as low as possible, hence his removal of much of the second fix at the Property F property."*

- The wife alleged that the husband tried to frustrate the court process:

71. *"These proceedings have taken far longer to be finalised than their level of complexity warrants. The delay is solely attributable to Mr Gorman. The wife commenced the proceedings in March of 2013. They were listed for their first directions hearing on 13 May, on which occasion Mr Gorman was ordered to file his answering material within 21 days.*
72. *No responding material was filed by him until November of 2013. In the meantime, he failed to attend a court ordered conciliation conference scheduled for July 2013, after indicating his willingness to attend. Another two conciliation conferences failed to produce agreement.*
74. *Regrettably, in my assessment, Mr Gorman's attitude to these proceedings is best summed up as being one of passive resistance. He presents as a man with a chip on his shoulder, who is deeply resentful towards his wife and the consequences of her bringing these proceedings.*
75. *He is however, in my assessment, not a deeply calculating or cunning person. His level of dishonesty, although not to his credit, was almost transparent in its simplicity and resulted, more often than not, in Mr Gorman metaphorically shooting himself in the foot. The problem for the court is in discerning what is fact and what is fiction from his evidence, as there does not always appear to be a rational basis for his apparent deception."*
- There was a dispute between the two valuers obtained as to the value of the investment properties. The husband had commenced renovations, which in both valuers' opinions reduced the current value of the property, so the wife argued to rely on the value of the properties prior to the valuations being obtained.
 - The Judge ultimately concluded that this was "an equitable date on which to fix a value of the Property F property". [107]

Reasons

Special Contributions

170. *"Although, Mr Gorman does not express it as such, it is clear that is his case that his contributions under [section 79\(4\)\(a\)](#) & (b) in direct financial form as a breadwinner and through his work on renovating and improving the various properties owned by the parties during their lengthy marriage are greater than those of Ms Gorman as a home maker and parent, which fall to be assessed under [section 79\(4\)\(c\)](#).*

171. *This has been a controversial topic, in the relevant jurisprudence, for some time and has most recently been the subject of discussion by the Full Court of the Family Court in Hoffman & Hoffman.^[21] I will return to this case and this issue in particular, when I turn to assess the parties' respective contributions in due course.*

192. *In my view, within the context of the parties' marriage, these contributions, whilst different in nature were largely complementary of one another. The parties mutually agreed to have a family. Six years spans the period of their children's births. Necessarily the children required care, whilst Mr Gorman was at work. Ms Gorman and the children required financial support. To a large extent, one could not have survived without the other. In these circumstances, in my view, the following comments of Fogarty J in Waters & Jurek remain apposite:*

- *"In most marriages, there is a division of roles, duties and responsibilities between the parties. As part of their union, the parties choose to live in a way which will advance their interests – as individuals and as a partnership. The parties make different contributions to the marriage, which the law recognizes cannot simply be assessed in monetary terms or to the extent that they have financial consequences. Homemaker contributions are to be given as much weight as those of the primary breadwinner..."^[30]*

193. *In Hoffman the Full Court rejected any notion that his Honour was suggesting that homemaker contributions must be given the same weight as those of a primary breadwinner. Care however must be taken not to undervalue such contributions because they do not directly result in capital accumulation. In this context, the Full Court approved the following passage from Figgins & Figgins:*

- *"We reject the concept that there is something special about the role of the male breadwinner that means that he should achieve such a preferred position in relation to his female partner. To do so is to pay mere lip service to gender equality. Marriage is and should be regarded as a genuine partnership to which each brings different gifts. The fact that one is productive of money in large quantities is no reason to disadvantage the other."^[31]*

194. *Essentially, in Hoffman, the Full Court rejected the notion of guidelines, for trial courts such as this one, in assessing disparate marital contributions. What is required is for the court to give close consideration to all forms of contributions arising under [section 79\(4\)](#) (a) to (c) bearing in mind the differences in quality arising between them.*

195. *Accordingly, one form of contribution cannot be regarded as innately superior to another.*

196. *Ms Gorman is not to be disadvantaged because her role as homemaker and parent did not produce income...."*

- Contributions were therefore assessed as equal.
- Based on the husband's meagre contributions to child caring expenses and the wife's need to meet the expenses of her teenage son Z, the Judge was persuaded to award a 5% adjustment in the wife's favour.

254. *"The outcome I envisage will provide this for her. She will receive just under \$700,000.00 in cash. It is to be hoped that she will be able to find accommodation of her preference with this sum, which will not require any significant level of borrowing, on her part. Given her employment situation, it would be imprudent of her to assume any significant level of debt.*

255. *Given the length of the marriage between the parties and its nature as a partnership of equals, it is appropriate and fair, I think, that they approach the prospect of retirement with a similar level of preparedness, at this stage. In these circumstances, I am satisfied that an equalisation of superannuation holdings represents a just and equitable outcome.*

256. *As I have remarked earlier, I accept that the end of the parties' long marriage has been a financial disaster for each of them. Scarce and hard won assets must now be divided between them. Each must now make separate arrangements in respect of their accommodation and individual preparations for their retirement. It is trite to point out, but true nonetheless, that two individuals cannot live with the same financial expediency as a couple.*

257. *The wife's preference has been to approach the case on the basis that she wishes to liquidate assets and make arrangements to accommodate herself afresh. The husband has wished to retain properties in which he sees potential. I have attempted to recognise both parties' preferences and bear in mind an equitable mix of assets and superannuation, which is proper in all the circumstances of the case."*



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Orders

- Proceeds of sale Property S be paid 55% to wife and 45% to husband
- Husband pay to wife \$250K, wife then transfer to the husband her interest in Property F and Property J
- Wife receive \$56K from husband's superfund.
- In short this resulted in a 55% division in the wife's favour in relation to non-superannuation assets and an equal division in relation to the superannuation assets.

216. *"Finally, it seems to me to be just and equitable, bearing in mind the length of the marriage between the parties, that there be an equalisation of their superannuation holdings. Given the age at which the parties began their marriage, it is the case that Mr Gorman acquired the vast majority of his superannuation entitlements during the marriage."*

217. *"In addition, it is clearly the case that, by dint of her family responsibilities, Ms Gorman was compelling to leave the paid workforce for many years and so forego the opportunity to acquire superannuation in her own name. For these reasons, it is proper that there be the order sought by the wife equalising the parties' superannuation. This will require a split from the husband's superannuation in the wife's favour."*

And again in relation to the issue of the equalisation of the superannuation interests, Judge Brown made the following comments:

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In conclusion in relation to the non-superannuation assets taking all the above factors into account, the judge said:

238. "I have determined that the parties' non superannuation assets are to be divided 45/55% in the wife's favour."

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