



## Counsel Family Lawyers

### Family Law Case Update #4: Property

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#### **Maddison & Maddison [2014] FCCA 1741**

**Court:** Federal Circuit Court of Australia (Brisbane)

**Judges:** Judge Laphorn

#### **FACTS:**

- Mr Maddison (father) and Ms Maddison (mother)
- Relationship commenced in 1996, married in 2001 and separated in 2001.
- Have three children X (born 1997), Y (2002) and Z (2003).
- Since separating children primarily living with mother
- X does not have a good relationship with father
- History of family violence noted – Domestic Violence Order made in 2004 and 2011.
- Domestic violence witnessed by X.
- Mother had a child, W, who had also been abused by the father when living with them.
- Matrimonial home sold for \$610,000. All debts etc to be paid off. Remanning money to be held in trust.

#### **ISSUES:**

- Parenting Plan
- Property

#### **HELD:**

##### Parenting Proceedings

- Made in accordance with Pt VII of the *Family Law Act 1975* (Cth)
- Equal shared parenting responsibilities, despite rebuttal of ICL.
- Both parties engaged in verbal and physical abuse of the other on the night of separation – 3 April 2011
- Family violence according to s4. In established.
- Best interests of the children to minimise opportunities where both parents come into contact with one another.
- Y and Z have a good relationship with the father. Acceptance that X's relationship with father is fractured due to witnessing of family violence.
- Each parent able to meet capacity of children's needs.
- Father should not take children with him on business trips longer than 48 hour period.



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### Property

- Alter maintenance of property as it is not just and equitable
- Total asset pool of parties is \$456,322
- Wife make greater contribution after separation
- Wife contribution of 55% for property
- Adjustment of 10% in the wife's favour for s75(2) considerations
- Overall property adjustment, husband to receive 33%.

### REASONS:

#### Parenting Proceedings:

- Equal shared time must be in the best interests of the child
- In light of family violence issues, risk of harm is considered
- Father's initiating application filed prior to 2012 changes to the *Family Law Act*, therefore definition of family violence at that time is used.
- Both parents are in agreement about shared parental responsibilities of Y and Z.
- ICL suggest that children would benefit from more time with the father.
- Err on the side of caution due to risk that children will go on extended holidays with either parent.

### Property

- Wife looking after children.
- Wife preparing the house for sale.
- Long length of the marriage (15 years)
- Wife unable to work full time for a period of 12-18 months.
- Wife has primary care of children and husband financial support is limited.

### ORDERS:

- Children spend alternate weekend with father, including Monday nights.
- During school holidays children to spend one week with the father, and during school break to spend three one week periods.
- Notice of 24 hours to other party if cannot care for the child.
- Restriction on business trips with father.
- This was a small pool of assets for redistribution between the parties.

In conclusion the judge said:

*"101. When I consider my findings as to contributions and future needs I am satisfied an appropriate property adjustment between these parties would see the wife receive 65% and the husband 35% of the property pool. With a pool of \$456,322 this would see the wife receive \$296,609 and the husband \$159,703."*



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### **CONTACT US**

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