



## Family Court Makes Adjustment to Property Settlement in Favour of Wife for Future Needs

Court makes adjustment to modest asset pool to assist wife as primary care giver for their 4 year old child

### INTRODUCTION

The case of *Rose & Mitchell* [2016] FCCA 771 (14 April 2016) was about a property dispute between a husband and wife. Mr Mitchell (*the husband*) and Ms Rose (*the wife*) were in a brief relationship that lasted around three years. The parties commenced a relationship in April 2010 (wife's version) or May 2010 (husband's version) and separated in August or September 2014.

The major asset the parties had together was the matrimonial home, purchased by the husband in 2011 for \$375,000. The net asset pool was \$215,595. The husband proposed to divide the asset pool by allocating 80 percent to himself and 20 percent to the wife. The wife's suggested allocation was 65 percent to herself and 35 percent to the husband. However, Judge Burchardt divided the asset pool 75 percent in favour of the husband and 25 percent in favour of the wife and decided that the parties retain their respective superannuation.

### BACKGROUND

The wife was born in 1981 and the husband born in 1972 with a 9 year difference in age. They first met in April or May of 2010 and an intimate relationship commenced between them.

The husband divorced his former wife in 2010 and at that time sold his former matrimonial home. He paid out his former wife from their relationship together at the time of commencing his relationship with the wife in this matter.

The husband had ownership of a business around the time the parties commenced being intimate. However, early in the relationship, the husband's business was wound up.

The matrimonial home was purchased in March 2011 for \$375,000. The husband made an initial contribution of \$250,000. Settlement occurred in July 2011 and the parties moved in. Soon after settlement, the matrimonial home was substantially renovated. The husband conceded that the wife contributed \$7,250 toward the renovations. However, Judge Burchardt stated that "there is no question that their endeavours would fairly be regarded as equal".

After the matrimonial home was purchased, the wife fell pregnant with the parties' child. The child was born in 2012. In 2013 the parties married and then separated on 25 August 2014 (husband's version) or September 2014 (wife's version). Both parties worked up until the child was born. After the child was born the wife was the primary carer of the child.

The parties' net matrimonial asset pool was \$215,105. The husband initially contributed over \$250,000 during the relationship to the matrimonial home and renovations. The wife (at least according to the wife's version of events) contributed around \$5,000 per month in income to the household and took care of the child.



## **DIVISION OF THE MATRIMONIAL ASSET POOL**

In considering the division of the matrimonial asset pool, the Judge cited the High Court case of *Stanford v. Stanford* (2012) 247 CLR 108. In *Stanford*, the High Court determined that the first step a court should undertake in property settlement proceedings is to determine what the legal and equitable interests of the parties are and then decide if a property adjustment is warranted.

## **PARTIES' INCOME**

The wife claimed that during the relationship she initially earned \$600 per week and then \$1,300 per week. This wife claimed this continued until she stopped working when she had the parties' child in 2012.

The husband claimed that during the relationship he earned on average \$1,300 a week gross.

The Judge found that the husband's claims were credible and based on evidence. The wife's income could not be reconciled with her evidence and for instance in 2012 her income was \$17,000.

## **FORMER MATRIMONIAL HOME**

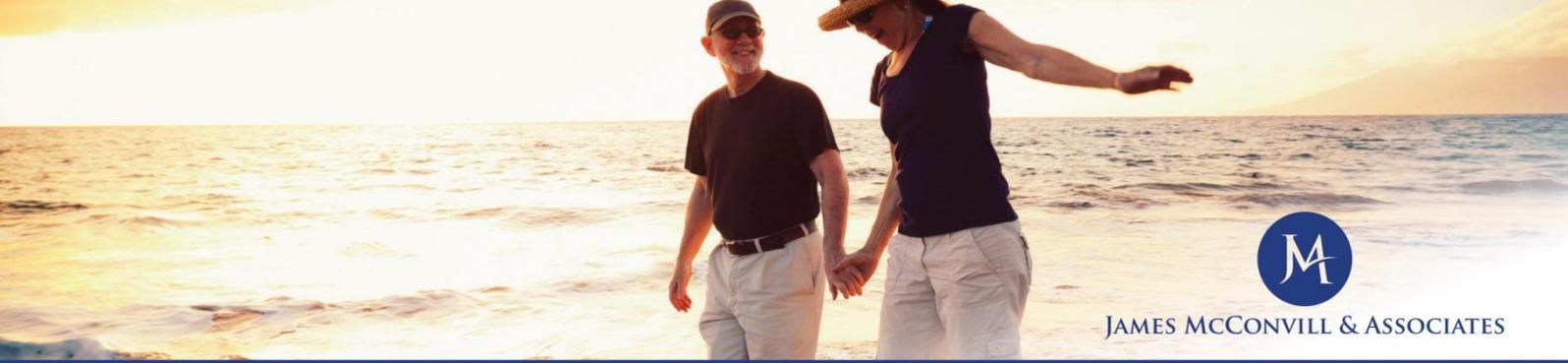
The parties were unable to agree on the value of the former matrimonial home. The husband's expert valuer stated the home was worth \$450,000. The wife disputed this and provided a valuation of \$475,000. The Wife did not submit her valuer for cross-examination during the trial. The Judge accepted the evidence of the husband's expert valuer.

The parties had undertaken improvement of the property during the relationship. The parties agreed that the value of the improvements was \$150,000.

## **HUSBAND'S DISPUTED DEBTS**

At the commencement of the relationship the husband repaid his parents \$68,000 from the settlement with his former wife. During the relationship the husband borrowed \$19,988 from his parents to undertake renovations of the parties' home and claimed this would need to be repaid to his father. The father appeared and gave evidence during the trial. The Judge claimed the father's evidence appeared to be honest and sound. The Judge decided that the debt of \$19,988 would be a debt include in the matrimonial asset pool and that the husband would need to repay his parents.

In addition, the Husband accumulated debts in relation to running his business. This amounted to a tax liability of \$7,424.



### MATRIMONIAL ASSET POOL

Based on all of the factors, his honour found a matrimonial asset pool as follows:

<b>Assets</b>	
Property and Home	\$450,000
Husband's Holden	\$15,000
Wife's VW	\$10,700
<b>Liabilities</b>	
Mortgage	-\$225,000
ATO Tax Debt	-\$3,735
Husband's Tax Liability	-\$7,424
Husband's Credit Card	-\$4,448
Loan from Husband's Parents	-\$19,988
<b>Total</b>	<b>\$215,105.00</b>

### DIVISION OF MATRIMONIAL ASSET POOL AND CONCLUSION

In determining this matter, the Judge considered that without the husband's initial contribution of \$250,000 to the house there would effectively be no asset pool available to the parties. The wife contributed her income during the relationship as did the husband.

A big factor that his Honour took into account was the future needs of the wife. It was agreed the wife would be the primary carer of the parties' child. The husband had little contact with the child post separation. The wife would therefore be disadvantaged in her career and income earning prospects so that she could look after the child. The husband would need to pay child support to the wife to assist her with the cost of raising the child. Based on the wife's future needs the Judge awarded 15% of the asset pool.

Taking into account the remaining factors including contributions during the relationship the Judge awarded a further 10% of the asset pool to the wife. The judge finally determined that property settlement would be finalised with 25% of the asset going to the wife and 75% to the husband.