

YOUR SHOUT AT THE BAR? CAREFUL, YOU COULD BE SHOUTING YOUR EX THE HOUSE!

DECEMBER 5, 2014 | SEPARATION & DIVORCE

A recent decision of the Full Court of the Family Court has found that a parent's decision to go to the pub rather than help out in the home and with the children, is a relevant factor in determining an appropriate division of assets in property proceedings.

In *Daymond v Daymond* [2014] FamCAFC 212 Bryant CJ, May and Strickland JJ upheld the decision, finding that it was open to Murphy J to accord substantial weight to the burden placed on the wife as a result of the husband's absences from the home for work and regular attendances at the pub. The wife was left to be the primary caregiver for their two children currently aged 24 years and 22 years, of whom the youngest suffers from Asperger's Syndrome. Based on this finding, the court held that the division of the asset pool of approximately \$2.2 million, being 52.5% to the wife and 47.5% to the husband was appropriate in the circumstances.

On appeal the husband argued that the decision of the trial judge was "*plainly wrong*"; that "*irrelevant considerations*" were taken into account (the husband's use of alcohol and the impact of that on the relationship); and that there was a "lack of adequate reasons" to explain the overall assessment of the parties' respective contributions. The court dismissed each of these arguments in upholding the trial judge's decision.

In his trial decision, Murphy J assessed the parties' contributions as equal, determining that,

- the relationship lasted approximately 21 years;
- both parties made initial financial contributions;
- the husband worked full time seven days a week, first in his professional practice and then also in his family business operating grazing properties, a mine and several investment properties;
- the husband inherited his share of the family business late in the marriage;
- the wife received income from part time work during the marriage;
- the wife made negligible direct financial contributions to the family business, but that she contributed indirectly by reason of her support of the husband;
- the husband's contributions represented by inheritances were substantial and greater than the wife's direct and indirect financial contributions;
- the wife's contributions as homemaker and parent "significantly" exceeded those of the husband, whose contributions were "minimal at best";
- the wife's role was exacerbated by the husband's absence from the home, attendances at the pub and the requirement for her to attend to their child's special needs. The wife's evidence of the husband's lengthy visits to the pub on a daily basis was accepted, and the court considered that the husband was choosing to be at the pub rather than at home making a contribution;
- the wife's post-separation contributions were made more difficult as a result of her continuing

provision for their child's special needs.

Weighing all of the future needs (s75(2)) factors, Murphy J determined an adjustment of 2.5% to the wife was just and equitable, where

- the wife would retain the property that she now owned and lived in with their child with special needs;
- the wife is now a qualified health care professional and could now potentially increase her work;
- that their adult child with special needs should be considered as if the wife was caring for a child into the future;
- the husband would have access to income of \$270,000 over the next 4 years, from the mine and his future income would be derived from the family business while he remained a shareholder, and any sale of the family company or his shares would impact his overall financial position;
- as stated by the Full Court, this was a classic case of weighing the greater financial contributions of the husband with the greater homemaker and parent contributions of the wife. The Full Court acknowledged the significant financial contributions of the husband, however stressed the importance of engaging in a holistic exercise in assessing the contributions made by the respective parties under section 79, and the court's wide discretion in the overall assessment of contributions. The Full Court did not accept the husband's submissions that what the wife was required to do was the equivalent of the things that a full-time mother would do at home with a child in any event.

This decision also highlights that where a parent chooses to be absent for long periods of time rather than contribute at home and to the care of a child, it is open to the court to look unfavourably on the conduct, regardless of the financial contributions made throughout the relationship.

If you need advice on divorce or separating, please [contact us](#) to make an appointment with one of our experienced family lawyers.

AUTHORS



MARIE DORE
SPECIAL COUNSEL

+61 7 3231 6350
marie.dore@bnlaw.com.au