Supreme Court of New Zealand
Te Kōti Mana Nui

11 DECEMBER 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SCOTT v WILLIAMS

(SC 95/2016) [2017] NZSC 185

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Pursuant to s 35A of the Property (Relationships) Act 1976, any report of this proceeding must comply with ss 11B to 11D of the Family Courts Act 1980.

Ms Scott and Mr Williams (not the parties' real names) were married in 1981. They separated in 2007. Mr Williams since the 1980s has had his own legal practice, first as a sole practioner and then as a partner in a two partner firm. Ms Scott, who graduated with a commerce degree, worked as an accountant after university. She gave up that role to focus on starting a family and was the primary caregiver for the couple's two children. After separation, Ms Scott worked for an accounting firm before resigning to run a homeware and gift business.

During the marriage the parties built up a substantial pool of assets. Three remaining relationship property issues were before the Supreme Court.

The first concerned an order made by the High Court and upheld by the Court of Appeal that the family home and an adjoining section in Remuera be sold. The Family Court had vested the properties in Ms Scott.

The second was the valuation of Mr Williams' law firm. The Family Court had valued the legal practice at $450,000 on the basis of what is termed the capitalisation of super profits methodology, which requires an assessment of the future maintainable earnings of the practice less a

notional market salary and tax before applying a multiple to this figure. The Family Court applied a multiple of three. The High Court and the Court of Appeal applied a multiple of two. This gave a value of $300,000.

The third issue related to the amount awarded to Ms Scott under s 15 of the Property (Relationships) Act 1976 (the PRA). Section 15 of the PRA provides that the Court may award a lump sum payment out of relationship property if the Court is satisfied that upon the end of the relationship the income and living standards of one partner are likely to be significantly higher than the other because of the effects of the division of functions within the relationship.

The Family Court was satisfied that the threshold for s 15 was met and made an order of $850,000 to Ms Scott, encompassing both the diminution in earning capacity of Ms Scott as a result of the division in functions of the marriage and the enhanced earning capacity of Mr Williams. The High Court adjusted the s 15 order to $280,000, taking the view that the share of the super profits from separation to hearing date awarded to Ms Scott should have been taken into account, as should the fact that Mr Williams would retire before Ms Scott. The High Court also considered that there was no evidential foundation for the enhancement component of the Family Court order. The Court of Appeal did not consider that the High Court should have taken the super profits into account and, after taking into account a number of factors, made a revised order of $470,000.

The Supreme Court granted leave to appeal on the questions of whether the order of sale should have been made, whether the approach taken in the lower courts to the valuation of the legal practice was correct and whether the amount awarded to Ms Scott under s 15 was correct. Leave to cross-appeal on whether the super profits should have been taken into account was granted to Mr Williams.

The Supreme Court has held unanimously that the order of the Family Court that the Remuera properties vest in Ms Scott should not have been overturned.

The Court has held by majority (Elias CJ, Glazebrook and Arnold JJ) that the appropriate multiple to be applied in this case was three and therefore that the valuation of the legal practice reached by the Family Court should be restored. William Young and O'Regan JJ would have dismissed the appeal on this issue.

As to s 15, the Court has held by majority (Glazebrook, Arnold and O'Regan JJ) that, apart from the differential retirement dates of the parties, the factors relied on by the Court of Appeal for reducing the s 15 order should not have been taken into account. To recognise this an order of $520,000 is substituted for the order of $470,000 made by the Court of Appeal. Elias CJ would have remitted the question of an appropriate order back to the Family Court. William Young J would have reduced the order to $188,000.

The cross-appeal was dismissed by majority (Glazebrook, Arnold and O'Regan JJ). William Young J would have allowed the cross-appeal. As Elias CJ would have remitted the issue to the Family Court, the cross-appeal did not arise.

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