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SIRPA ELISE ALALÄÄKKÖLÄ v PAUL ANTHONY PALMER

(SC 22/2024) [2025] NZSC 9

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.

What this judgment is about

This appeal first concerns whether the copyright in artwork created during the course of a relationship can be "relationship property" for purposes of the Property (Relationships) Act 1976 (the PRA). If it can be, the appeal raises a second issue about how the artworks and the associated copyrights are to be treated in a relationship property settlement.

Background

The appellant, Ms Alalääkkölä, is an artist. During her 20-year marriage with the respondent, Mr Palmer, the appellant created a number of artworks. While the parties agree the artworks themselves are relationship property, they disagree on whether the copyrights in the artworks are "property" under the PRA, or if they are, whether they are "relationship property" or "separate property". If the copyrights are relationship property, they, or at least their value, will be divided equally amongst the parties.

The Family Court determined the copyrights in the artworks were the appellant's separate property. The High Court disagreed, finding the copyrights to be relationship property. The Court of Appeal agreed with the High Court and determined that while the respondent should receive compensation for their value, the copyrights should be retained by the appellant.

The respondent now accepts that this should be the case. However, the appellant was granted leave to appeal to the Supreme Court. The approved question was whether the Court of Appeal was correct in determining two questions of law: whether the copyrights are "property" for purposes of the PRA and, if so, how they should be classified under the PRA. The Court also sought submissions as to what orders should be made as a consequence of its answers to the two questions of law.

Submissions

In the Supreme Court, counsel for the appellant submitted that while copyright is considered personal property under the Copyright Act 1994, it need not be property for purposes of the PRA because of the different objectives of the two Acts. Copyright was also said not to be property under the PRA because it is not tangible and because it is the result of a creator's personality and skill. The appellant submitted that even if copyright is property under the PRA, the copyrights in the artworks were not relationship property because they were not "acquired" during the relationship; they were created with the works using artistic skills acquired before the relationship began.

Counsel for the respondent argued that the PRA adopts an expansive definition of property—including "personal property" and "any other right or interest". Copyright, as personal property, falls within that definition. The appellant acquired the copyrights during the marriage and so they were relationship property. Sometimes parties have a personal connection to property but it is nonetheless classified as relationship property under the PRA.

Should the copyrights in this case be classified as relationship property, the appellant proposed four categories to value the artworks and the copyrights in them. It was said that in only two of these categories do the physical works have any value and in only one do the copyrights have any value. At the hearing, the respondent accepted this valuation method might be a useful framework in this case and future cases.

Supreme Court decision

The Supreme Court has unanimously answered the questions of law as follows: copyrights are property for purposes of the PRA and they may be relationship property. The Court has therefore dismissed the appeal.

Is copyright "property" under the PRA?

The Court found that copyright is property under the PRA. The Copyright Act carefully distinguishes copyright, a bundle of economic rights which may be sold or assigned, from moral rights, a bundle of personal rights which a living author cannot assign to others (at [24] and [29]). The Copyright Act confirmed that copyright is personal property in New Zealand. The rights and remedies held by a copyright owner lend copyright a value that can be realised in money. For these reasons, copyright fits the PRA definition of "property" as "personal property". There was no reason to exclude intangible personal property from that definition (at [30]). The social purpose of the PRA also supported this conclusion; copyright can be both an expression of an author's personality and skill and a product of her relationship for purposes of the PRA (at [37]).

There was no obvious reason to exclude copyright as property under the PRA because it expresses the creator's personality and skill. Parliament had chosen to separate economic and moral rights in the Copyright Act. To treat copyright as property under the PRA is not to detract from the copyright. Rather, it is to recognise the value of the bundle of economic rights that copyright embodies (at [31]–[32]).

However, the Court acknowledged that recognising copyright as property under the PRA might complicate a court-imposed settlement and any valuation made for purposes of

division. Notably in this case, if copyright is distributed to a former partner, the author might have reasonable concerns about how the former partner treats the work, potentially harming her reputation, or exploits copyright in ways that detract from the value of future works (at [34]). These considerations suggest that courts should design orders to minimise conflict in the distribution of property and unnecessary harm to the author's future reputation and income, but they do not compel the conclusion that copyright is not property at all (at [36]).

Can copyright be relationship property under the PRA?

The Court held that copyright could be property "acquired" during a marriage and therefore relationship property under s 8(1)(e) of the PRA. In ordinary usage, "acquire" can mean "to get or obtain by any means", which is a meaning wide enough to include things made or created by the owner. The PRA also appeared to use "acquired" in a broad sense, consistent with its expansive definition of property, to include property "created" during the relationship. Finally, copyright is a bundle of rights, each of which can naturally be said to have been acquired when a work is created (at [39]–[42]).

The author's personal attributes and skills are not property, but their use during the relationship to create an artefact is. As a matter of fact, the use of those attributes and skills may be the product not only of the author's personality and skills but also the division of effort within the marriage. That was true in this case: the appellant worked as an artist to earn income for the family. The artworks, and the copyrights in them, must be brought into account in the relationship property settlement (at [43]–[44]).

How should the works and associated copyrights be treated in the settlement?

The Court began by recognising that relationship property is typically valued at market value at the date of the hearing of the application. The Court also agreed it was appropriate to adopt the appellant's four categories in this case.[1] It understood that the copyrights in issue were confined to those in the unsold physical artworks (at [46]–[48]).

The Copyright Act recognises an author's right to decide when it is appropriate to first disclose their works to the public. Because an original artwork is closely associated with an artist's personality and reputation, that right should be respected so far as it can be exercised consistent with a just division of relationship property (at [50]–[52]).

The Court discussed the following categories for the Family Court to allocate the works between, and the general valuation principles to be applied by the Family Court:[2]

Category of work	**General valuation principles**
Incomplete, unsuitable or damaged works	Value, if any, is as canvases the appellant may reuse for future works.
The appellant's private collection	Valued on the basis they will not be sold or otherwise disclosed to the public during the appellant's lifetime or by her executor.

1 The Court determined a potential fifth category, debated by counsel, was not a distinct category for the Court's purposes. See at [47], n 55.

2 For further observations about the valuation of works falling into the third and fourth categories, see at [57]–[59].

One-off unique paintings	Valued on the basis that they will remain the only copies in existence. Any value in the copyright should be reflected in the price of physical work.
Works which have been, or were intended to be, the subject of multiple copies	Valued on the assumption that the works will be sold on the basis that the copyrights may be exploited.

Result

A **We answer the questions of law as follows: copyrights are property for purposes of the Property (Relationships) Act 1976 and they may be relationship property.**

B **The appeal is dismissed. We direct that the proceeding be remitted to the Family Court to decide the value and distribution or sale of the artworks and copyrights in them.**

C **The appellant must pay the respondent costs of $15,000 plus usual disbursements. We allow for second counsel.**

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