

JURISDICTION : FAMILY COURT OF WESTERN AUSTRALIA
ACT : FAMILY LAW ACT 1975
LOCATION : PERTH
CITATION : S and S [2008] FCWA 26
CORAM : THACKRAY CJ
HEARD : 17 JULY 2007 AND
25 FEBRUARY 2008
DELIVERED : 29 FEBRUARY 2008
FILE NO/S : PT 6550 of 2005
BETWEEN : S
Applicant/Wife

AND

S
Respondent/Husband

Catchwords:

PROPERTY SETTLEMENT - Contributions - 14 year marriage - large inheritance received after separation - where inheritance forms almost the entire asset pool - farming property - inheritance not quarantined - husband's contributions assessed at 82.5%

PROPERTY SETTLEMENT - s 75(2) factors - assessment of future needs - disparity in capital - 5% adjustment

Legislation:

Family Law Act 1975, s 75(2), s 79(4)(d)

Category: Not Reportable

Representation:

Counsel:

Applicant : Mr M Rynne
Respondent : Mr S Walker

Solicitors:

Applicant : Bowen Buchbinder & Vilensky
Respondent : Haynes Robinson

Case(s) referred to in judgment(s):

Farmer and Bramley (2000) FLC 93-060
Gosper and Gosper (1987) FLC 91-818
Kessey and Kessey (1994) FLC 92-495
Lee Steere and Lee Steere (1985) FLC 91-626

1 [Mr and Mrs S] separated in 2004 after a 14 year marriage. They had worked very hard, but had only modest assets. In 2005, [the husband]'s father was accidentally killed, as a result of which [the husband] inherited his valuable farm. [The wife] now seeks 40% of the parties' assets, including [the husband]'s interest in the estate. Her claim is based not only on the contributions she made during the marriage and her future needs, but also on the significant work [the husband] did on his father's farm. [The husband] believes [the wife] is entitled to only a small proportion of his father's estate. He claims that if he has to pay her any more than \$100,000 he will have to sell the farm.

2 The matter proceeded to trial in July 2007. Regrettably, there were gaps in the evidence and I was not prepared to give judgment until further evidence had been obtained. This was not done promptly and the matter remained in abeyance until the trial was finally concluded in late February 2008.

Brief background

3 [The husband] and [the wife] commenced living together in 1989 and were married in 1990. [The husband] was employed as a shearer, but worked for his father for about half of each year. [The wife] was working as a secretary but gave up her job after the marriage and started working as a roustabout on the same shearing team as [the husband].

4 [The wife] is now 49 years of age and works part-time at the local shop in the small town in which she lives. [The husband] is 43 years of age and is employed by the estate of his late father as the manager of the farm.

5 There are two children of the marriage, [Tom] born in January 1992 and [Trina], born in April 1993. Both children are attending secondary school in [the country town]. They spend roughly equal amounts of time living with each parent during school holidays, although [Tom] probably spends more time with his father as he enjoys the farm life. [The husband] has entered into a new relationship with a woman who has three children. [The wife] has not re-partnered.

Credibility

6 I found both [the husband] and [the wife] to be honest people and reliable witnesses, albeit [the husband]'s evidence on financial matters was not very helpful as he did not have a good appreciation of the financial issues associated with his father's estate. It was difficult also to reconcile some of the financial documents with apparently credible evidence given by the parties, for example concerning [the husband]'s income. Ultimately, I was left with no alternative than to take a fairly broad brush approach to some of the evidence, making do with the unsatisfactory information provided.

Property settlement approach

7 I am required to follow a four-step process when dealing with applications for property settlement. Those are:

- Identify and value the assets and liabilities of the parties;
- Assess the parties' contributions to the assets;
- Assess a range of factors set out in s 75(2) and s 79(4) of the Act; and
- Consider whether the order proposed is just and equitable.

Assets and liabilities

8 I find the assets and liabilities of the parties to be as set out in the table below:

Assets

<i>DESCRIPTION</i>	<i>HUSBAND</i>	<i>WIFE</i>	<i>ESTATE</i> \$
Farming property			2,285,000
Plant and equipment			604,138
Sheep			90,658
Shares – [W] [AWB]			55,637 67,833
CBH tolls			36,984
Boat and trailer			3,000
2000 [utility]			27,000
Grain delivered			215,340
Add back - legal fees paid	1,500		50,000
Bank (fluctuates – balance of \$1,500 at trial offset by bills to be paid)	280		
AXA shares	1,667		
2005 [motor vehicle]	25,000		
Household contents	4,500		

Firearms	1,000		
Superannuation	6,982		
Bank		874	
1993 [motor vehicle]		2,800	
Household contents		2,500	
Superannuation		323	
TOTAL	40,929	6,497	3,435,590

Liabilities

<i>DESCRIPTION</i>	<i>HUSBAND</i>	<i>WIFE</i>	<i>ESTATE</i> \$
[cheque account]			215,150
[seasonal account]			158,085
[term loan]			16,929
[term loan]			200,000
Annuity			253,760
[AWB] Loan			255,329
[GE] Credit	1,800		
[F] Credit	22,200		
Visa		3,030	
TOTAL LIABILITIES	24,000	3,030	1,099,253
NET ASSETS	16,929	3,467	2,336,337

9 Most of the items in the table above were agreed. The only matters about which I need to make any comment are the following:

CBH tolls

10 This figure was not agreed and has been taken from the best evidence available, which was the balance sheet of the estate as at 30 June 2006.

Legal fees added back

11 [The husband]'s evidence concerning his legal costs was confusing. The compulsory costs notification letter suggested his fees were only \$13,548 and the estimated cost of the trial was \$10,000. However, [the husband] gave evidence at the trial in 2007 that he believed \$50,000 had been paid into his solicitors' trust account. I gave leave to [the husband]'s counsel to provide a statement following the trial setting out the true position. That information was not provided and confusion on the topic continued on the resumption of the trial in 2008. However, [the husband] again assured me at the resumed hearing that the estate had paid \$50,000 to his solicitors relating to these proceedings, in addition to \$1,500 he had paid himself. Only \$21,171 of the funds paid to the solicitors had been used in payment of fees rendered. I consider it appropriate to add back into the asset pool all of the funds paid to the lawyers, since those funds would have been available for distribution had [the husband] not prepaid his fees.

12 [The wife] has also incurred legal costs. I accept that all of the funds she used to pay her legal costs were borrowed from her brother. I have not added back [the wife]'s paid legal costs as I have not included her liability to her brother.

Wool and grain on hand

13 [The wife] included these items in the schedule of assets of the estate but indicated that the value was not known. There was no evidence to assist me to ascertain the value of these assets even if they exist. I am therefore unable to take them into account.

Unaccounted wheat sales

14 [The wife] drew attention to the fact that the receipts for grain sales appeared not to match the deliveries to the local bins. Given there appeared to be a substantial discrepancy in the information provided, I indicated that I was not prepared to make my decision until such time as the discrepancy was cleared up. The issue was resolved on the resumption of the trial when the parties agreed that the wheat should be brought to account at the figure shown in the table above.

[AWB] Loan

15 [The wife] originally included in her Schedule of Assets and Liabilities a debt of \$255,329 owed by the estate to the [AWB]. Although having included it in her statement, [the wife]'s counsel then argued that there was no evidence that this was, in fact, a liability of the estate. Once again, I was dissatisfied with the state of the evidence and gave the parties leave to re-open to clarify the position. Agreement was reached at the resumed trial in 2008 that the figure mentioned above was correct.

Annuity

16 [The wife]’s counsel drew attention to the fact that the Statement of Assets and Liabilities indicated that there has been a substantial increase in the liabilities of the estate after the death of [the husband]’s father. This was due, at least in part, to the inclusion of an amount attributed to the annuity payable to [the husband]’s step-mother. The parties had taken actuarial advice and there was agreement that the capitalised value of the annuity was \$253,760. There was no evidence to indicate that an annuity would be purchased for this amount, but the figure had been included to draw attention to the fact that [the husband]’s inheritance is encumbered. Although it was suggested that I should ignore the annuity as a liability and instead take it into account under s 75(2), I consider it is more realistic to treat the obligation as a liability in the amount calculated by the actuary.

Contributions

17 [The wife] submitted that contributions to the entire asset pool should be assessed as having been made 70:30 in [the husband]’s favour. [The husband] submitted that there had already been a fair distribution of the parties’ modest assets following separation and that [the wife] had made no contribution to any of the assets now owned by him, including his interest in his father’s estate.

18 Neither party had any assets of substance at the commencement of the relationship. Both acknowledge that the other worked very hard during the marriage and there was no suggestion either had made a greater effort than the other. It was a crucial element of [the wife]’s case, however, that much of [the husband]’s efforts went unrewarded as he spent a great deal of time working on his father’s farm and was not properly remunerated. [The husband] readily acknowledged he had not been properly paid for much of the time he was working for his father, although his evidence suggested that in the last few years he had received a proper wage. [The husband] also readily conceded that the reason he was prepared to work for less pay was because he wanted his father to make good on his promise to leave him the farm.

19 [The husband] spent about half of each year working on his father’s property, including the busy times of seeding and harvest. He says he did this from the commencement of cohabitation until about 1995/1996 and that he received “little income” for his efforts. [The husband] claims that after he acquired his crutching business in 1995/1996 he continued to work about half of each year for his father, for which he was paid \$10,000 per annum and for the other half of the year he earned about \$40,000 from his crutching business. [The wife] recalls [the husband]’s father initially paid him \$100 a week when they were first married, which increased to \$150 once [Tom] was born in 1991, and later increased to \$300 a week. I accept both parties were doing their best, but their evidence on this issue was fairly vague. Nevertheless, what clearly emerges is that [the husband] received significantly less income than he could have earned if he had been working for someone else. (Although [the husband] did not mention it in his affidavit, [the wife] gave evidence that [the husband] did work for a local farmer while he had the crutching business and worked for his father only at seeding and harvest. She also gave evidence that [the husband] and his father profitably share farmed a block at around the same time.)

- 20 The crutching business was sold in 2000 for \$15,000. After the business was sold, [the husband] worked full-time on the farm. He was paid \$500 a week for the first 12 to 18 months, but this increased over three years to \$800 a week. [The husband] became ill with [kidney problems] in 2002. He was hospitalised frequently, up to 7 or 8 times a year and sometimes up to 10 days at a time. His illness prevented him from working full-time and the parties began to get into financial difficulties, as [the wife]’s income was not sufficient to meet their commitments.
- 21 [The wife] had stopped work when she fell pregnant with [Tom] and did not generate any income until when [Trina] was a baby, at which time she took over an Australia Post mail run. This entailed collecting the mail from the local post office and delivering it to roadside mail boxes in the area. The mail run took about five hours, two days a week and [the wife] took both of the children with her. She initially received \$800 a month for this work, which later increased to \$1,000 a month. She operated the mail run until the contract was lost in about 2001. [The wife] then started working at the local hotel four days a week as a housemaid and two nights a week as a cook. [The wife] also helped out in the sheep crutching business. She would cook for [the husband] and the two employees and also did the basic bookwork.
- 22 I conclude that at the very least, [the wife] did all that could have been expected of her during the relationship and, in fact, probably more - since not only did she make the overwhelming contribution to the care of the children and the home but, in addition, she took on additional onerous tasks with a view to earning some more income. It should be recognised, however, that [the husband] also worked very hard. For example, he usually worked a 6 day week and took only 2 weeks holiday a year. Had [the husband] been properly remunerated for all of the work he did, I would have had no hesitation in concluding that the contributions made by the parties during the course of the relationship were of equal value. However, [the husband] was not properly remunerated for many years and I infer that the only way he was able to afford to continue working for his father for less than a reasonable wage was because the family’s finances were being propped up by the income earned by [the wife].
- 23 [The wife] readily acknowledged in cross-examination she never enjoyed a good relationship with [the husband]’s father and rarely visited the farm. They did not argue but rather, as [the wife] said in her evidence, “put up with each other”. She certainly did not go out of her way to endear herself to him with a view to improving [the husband]’s prospects of inheriting the farm. On the other hand, for many years, [the wife] tolerated [the husband] working for his father without adequate remuneration – and I accept her assertion that “the farm always came first”. As a consequence, the standard of living she and the family enjoyed was less than it would have been had [the husband] worked for full pay either for his father or for someone else – a fact that [the wife] pointed out to [the husband] whilst they were together.
- 24 Notwithstanding the exceptionally hard work of both [the husband] and [the wife], they had next to nothing to show for their efforts by the time they separated – save for the hope that at some stage in the future [the husband] might inherit the farm. They did not even own their own home. They had purchased a two-thirds interest in a home in [the town] in 1992, with [the husband]’s father purchasing the other third. The property cost \$52,000 and all of the purchase price was apparently

borrowed. [The husband] and [the wife] lived in the home but there is no indication they paid any rent. In fact, it seems they paid only half of the mortgage, notwithstanding they owned two-thirds of the property. On the other hand, [the husband] acknowledged that he did a “considerable amount of work maintaining the house”.

25 In 2002, [the husband]’s father discharged a \$16,000 debt that [the husband] and [the wife] owed at the time. This was presumably necessary because of the difficult financial circumstances in which the parties found themselves after [the husband] became unwell. Interestingly, notwithstanding that [the husband] had worked for many years for less than a reasonable wage, the *quid pro quo* for the discharge of the debt was the transfer to [the husband]’s father of the parties’ interest in [their home]. (The parties were, however, allowed to continue to occupy the property.) There was no evidence of the equity in the property at the time of the transfer, although it appears that for probate purposes it was valued at only \$85,000 following the death of [the husband]’s father.

26 After the parties’ separation, it seems [the wife] had greater responsibility for the care of the children as they mainly lived with her until they went away to board in [the country town]. [Tom] started boarding in 2005 and [Trina] in 2006. [The wife] worked on a part-time basis following the separation and [the husband] worked full-time on the farm, receiving a reasonable wage for his efforts. It seems that [the husband] has paid off a \$2,000 tax debt the parties had at the time of separation. I am satisfied their contributions after the separation were of equal value, save that [the wife] has been able to conserve assets (or avoid going into debt) by obtaining rent-free accommodation from her brother. [The wife]’s brother has also paid for the car she currently has in her possession and which is included in the pool of assets.

Assessment of contributions

27 I consider it is reasonable to characterise the efforts both [the wife] and [the husband] made during the course of the relationship as being contributions not only towards the modest assets they acquired prior to separation, but also to the assets [the husband] inherited following the separation. In my view it would not be just and equitable simply to quarantine the estate in a way that [the husband] proposes and pretend that [the wife] made no contribution to it.

28 In coming to my decision, I have kept in mind the views expressed by Finn and Kay JJ in *Farmer and Bramley* (2000) FLC 93-060.

29 Kay J said:

65. ...In my view the passages cited by Guest J from *Shaw and Shaw* (1989) FLC 92-010, *Jones and Jones* (1990) FLC 92-143 and *Branicki* (unreported Full Court 18 May 1990), place beyond doubt the proposition that an assessment of contributions made under s 79(4)(a), (b) and (c) does not have to bear a direct relationship to the assets as they presently exist. The court is asked to determine what is an appropriate and just and equitable order, bearing in mind not only the contributions made directly to the existing assets, but contributions made generally during the course

of the relationship between the parties both to the acquisition, conservation and improvement of assets (which may or may not still exist) and to the welfare of the family in the role of homemaker and parent.

66. This is not to say that the Court should be blind to the circumstances in which any assets were acquired post separation. Clearly contributions made towards the acquisition of such an asset by one party and the lack of contributions made towards its acquisition by the other party may weigh heavily in the exercise of discretion. However it is quite wrong to say that contributions made under s 79(4)(a), (b) or (c) before an existing asset was acquired could have no bearing on the outcome of the proceedings.

30 I have taken into account the fact that both [the husband] and [the wife] worked very hard throughout their fairly lengthy relationship. They both made sacrifices in the hope that one day [the husband] would inherit his father's property. They acquired no assets of any substance, arguably because [the husband] was prepared to work for reduced wages in order to improve his prospects of inheriting. On the other hand, the income foregone was nowhere near as valuable as the property [the husband] has now inherited and he should receive the greater credit for the contribution of the assets from the estate. *Gosper and Gosper* (1987) FLC 91-818; *Kessey and Kessey* (1994) FLC 92-495.

31 In the exercise of the wide discretion available to me, I have determined that contributions to the entire asset pool should be assessed as having been made 82.5% by [the husband] and 17.5% by [the wife]. On this basis, [the husband] would receive assets to the value of \$1,944,305 and [the wife] would receive \$412,428.

Section 75(2) and other factors

32 [The wife] asserted that if contributions were assessed as she proposed, there should be a 10% adjustment in her favour on account of 75(2) factors (but asserted that regardless of what finding was made in relation to contributions, she should receive 40% of the assets). [The husband]'s counsel argued that the s 75(2) adjustment should be made by reference to a monetary amount rather than a percentage of the asset pool and further submitted that the amount should not exceed \$100,000.

33 [The husband] is 6 years younger than [the wife]. Given the age difference, it is likely [the husband] will remain working for longer than [the wife]. Whilst there was evidence he had suffered health problems in the past, there was no evidence of any impact this is likely to have on his earning capacity in the future. Indeed, the evidence indicates he has been working on a full-time basis managing the farm, for which he has been receiving an income of \$925 per week (as well as free petrol, some free meat and rent-free accommodation).

34 [The wife] is employed on a permanent casual basis, working roughly 15 hours a week at the local store. She was earning about \$270 per week at the time of trial in 2007. (She was also receiving child support for [Trina] and social security payments.) She has worked as a secretary in the past, but has not done so for many years. I accept

it is likely that the only income she will receive in the future will be from work as a shop assistant. Such work is not highly remunerated. I accept also that if [the wife] continues to live in [the town], it is unlikely that she would be able to obtain full-time employment. The town services a very small regional community and there are only a handful of jobs for which [the wife] would be qualified.

35 I accept [the wife]'s evidence that she wants to move to [the country town], primarily so [Trina] can live with her. [Trina] does not like boarding and [the wife] also reasonably believes there are much better prospects of more work in a larger regional centre, such as [this country town]. (This is important not just for [the wife], but in due course for [Trina] who may want to leave school in the not too distant future.) However, it may still take [the wife] some time to become known in [the country town] and to secure a better paid position than the one she currently has. Furthermore, in the current economic climate in the agricultural areas of Western Australia there is no guarantee that [the wife] will be able to obtain full-time employment.

36 It was unclear whether [Tom] would also live with [the wife] if she moved to [the country town]. Given he is willing to spend some of the holidays living with his mother, there seems a reasonable possibility he would live with [the wife] if she moved to [the country town] (notwithstanding that [Tom] and [Trina] apparently don't get on terribly well). Apart from anything else, it is unlikely [Tom] would receive any subsidy for continuing to board if his mother was living in [that town]. In any event, it seems [Tom] is planning to take [an apprenticeship] in the near future and it may be that he will have some income from which to meet some of his living costs. Regardless of what [Tom] ends up doing, it is likely [the wife] will be required to house and maintain [Trina] until she finishes school (with the help of child support from [the husband]). Even when she finishes school, [Trina]'s ability to contribute to her own support would be dependent on obtaining employment. Although she hopes to obtain an [apprenticeship] at the end of 2008, there would be no guarantee one would be available. On the other hand, if [Tom] were ever unable to obtain employment or support himself, the likelihood is that he would return to the farm (presuming it has not been sold).

37 One consequence of [the wife] moving to [the country town] is that her accommodation costs will increase. I accept her evidence that a home in [the current town] could be found in the region of \$80-110,000, whereas in [the country town] a home in a suitable part of town would cost in the region of \$300,000 (with older, two bedroom houses in less desirable parts of the town being available for around \$180,000). [The wife] will also need to acquire more furniture as she does not own most of the furniture in her brother's property.

38 Although [the wife] was criticised for not having made more enquiries about the availability of employment and accommodation in [the larger country town], I do not consider it was reasonable for her to be expected to do more, as there is no certainty she will be able to move to [the country town] (this being dependent upon the size of her property settlement.) I also consider it a reasonable aspiration for [the wife] to want to own her own home in the better part of [the country town], given the security this would provide her and the children and given the extent of the assets [the husband] will retain. Indeed, when giving evidence in his affidavit concerning

what would be a reasonable standard of living for both parties [the husband] said “The payment of a lump sum by me to my wife that would enable my wife to purchase a house in [the country town] and enable me to maintain the ownership of the farming operation”. (At the time, [the husband] was asserting he could afford \$300,000 rather than the \$100,000 limit discussed below.)

39 A major factor to take into account in considering the s 75(2) adjustment is the fact that, in accordance with my assessment of contributions, [the husband] will be left with very substantially greater assets than [the wife].

40 Section 79(4)(d) requires me to take into account the impact of any order I propose to make on the earning capacity of either party. Any order that gives [the wife] a significant capital sum will improve the prospects of her being able to afford to obtain accommodation in [the country town] and will lead to the possibility of her having a greater income than if she continues to live [in the current town].

41 The issue of earning capacity is of significance in considering [the husband]’s position. He originally claimed in his affidavit prepared in February 2007, just a few months before trial, that any payment to [the wife] greater than **\$300,000** would require him to sell the family farm. In his oral evidence, he asserted that any payment greater than \$100,000 would leave him in that situation. [The husband] presented as an honest man but it was apparent he is unsophisticated in money matters and had only a very general appreciation of his financial position. Anything he believed about his ability to service a borrowing would have come from what he had been told by others and there was no reliable evidence to indicate precisely what he could afford to borrow in order to meet his obligations to [the wife]. This would, in any event, remain dependent on the seasons, which of course cannot be predicted.

42 [The husband] claimed that there had been a number of bad seasons in recent years and his case was presented on the basis that the farm had been losing a substantial sum of money. This was borne out by the 2005/2006 accounts, which indeed showed a very large operating loss – largely attributable it seems to a reduction in income from wheat sales which were down from \$199,704 in the previous year to \$49,605 in 2005/2006 – see Exhibits 1 and 5. (The way in which the wheat sales had been treated was, however, a matter of controversy). If such losses were to be repeated, any order requiring the sale of the property would be likely to improve [the husband]’s earning capacity as he would stop losing money and would be able to divert his energies to working for somebody else for a regular income. It is impossible to determine whether or not [the husband] is likely to earn a reasonable living from the farm in the future. The evidence suggests that his father was able to do relatively well and the financial accounts do not bear out [the husband]’s belief that the farm operated at a loss in all of the years leading up to the trial. In any event, it must be appreciated that any reduction in [the husband]’s settlement to take account of the impact on his earning capacity will have an equivalent detrimental impact on [the wife].

43 No evidence was led to indicate whether or not it might be feasible to sell off part of the farm (which is on five titles) in order to meet [the wife]’s entitlement, whilst allowing [the husband] to continue to farm the rest of the property. In this court of specialist jurisdiction, I can take notice of the fact that this is a very frequent way in which family law disputes involving farming properties are resolved. In noting this, I

have not overlooked [the husband]'s evidence that the farm is in "marginal farming country" and that he has allegedly been told by his bank manager that if he has to borrow more than \$300,000 he will have no alternative than to sell the "entire farming operation".

44 It was also submitted that I should take account of the fact that [Tom] wishes to farm the property when his father is no longer able to do so. Indeed, [the husband] claimed that "it would be a complete disaster if I had to sell the farming operation, due to the interest that [Tom] has shown in it, and as I would have no other means of earning an income, and would lost the home which [Tom] and I are making for ourselves". Whilst I am acutely aware of the fact that in many – if not most – farming families there is a strong desire to hold onto property for the next generation, I do not consider that the legislation permits me to take this cultural phenomenon into account. I do not consider it would be appropriate for me to make allowance for the fact that [Tom] wishes to retain the farm when I take into account that there is another child of the marriage whose interests cannot be ignored. I perceive that my task is to divide all of the property in fair proportions between the parties and it is then a matter for them to determine what assistance each of them wishes to provide to their children out of their share of the settlement. *Lee Steere and Lee Steere* (1985) FLC 91-626.

45 Taking all of these matters into account, I consider that it is appropriate for there to be a further adjustment on account of the s 75(2) and other factors prescribed by the legislation. I consider that an adjustment of 5% of the entire asset pool is appropriate, (or in dollar terms \$117,837). The overall outcome therefore would see [the wife] receiving \$530,265 and [the husband] \$1,826,468.

46 [The wife] did indicate through her counsel that once I had determined the extent of her entitlement, she would be prepared to enter into negotiations with a view to allowing [the husband] to make the settlement in such fashion as would maximise his prospects of retaining the property. My impression of [the wife] is that this would be a likely scenario. She may be prepared to be more generous, but I propose to order [the husband] to make an initial payment of \$325,000 on or before 1 June 2008 and the balance by 1 June 2013. I propose to order interest on any unpaid amount from 1 June 2008 at a rate of 5% per annum, payable annually commencing 1 June 2009. If [the husband] cannot afford the initial instalment or any interest that becomes payable, the property would be sold and the entire amount would fall due for payment on settlement of the sale.

47 I have chosen the figure of \$325,000 as I consider it appropriate for [the wife] have sufficient funds to buy a home in [the country town] and acquire some furniture. The interest of 5% per annum will give her a modest income to help provide her with a satisfactory standard of living, in the knowledge that prior to reaching retirement age she will then receive a further significant capital payment.

Just and equitable

48 This was a most unusual case and one which I found difficult to determine. I acknowledge there is room for disagreement as to whether or not the ultimate outcome is just and equitable. The result I have reached, in my view, places

appropriate weight on the significant contributions each party made over a fairly lengthy relationship and will leave [the wife] with sufficient funds to allow her to have the security of her own home, with some money left over. Hopefully, by some means [the husband] will be able to borrow the necessary funds to make the payment and to keep the property he has inherited from his father. If, however, it turns out that he is unable to do so, then he will be left in a very secure position as he will have a vastly greater amount of capital than [the wife]. He can use that capital to acquire a less valuable farm, or, alternatively, he can use it to acquire a house and have substantial funds left over on which to draw to augment the income he could earn by working for someone else. In these circumstances, I consider the outcome is just and equitable.

Orders

49 There is no point giving consideration to the precise form of orders until it is known whether or not [the husband] will be able to come up with the funds to meet [the wife]'s entitlement. I propose to allow the parties time to consider these reasons and to provide proposed Minutes of Orders to give effect to my judgment.

50 I should indicate that in coming to my decision I have proceeded on the assumption that the administration of the estate will have progressed sufficiently to allow [the husband] to be able to secure a loan to satisfy his initial obligation to [the wife] – presuming of course that the bank is prepared to advance the required funds. There was no evidence given at the resumed hearing in February 2008 to indicate whether this was the case or not. In those circumstances I am prepared to hear further submissions from counsel in relation to the time for payment of the first instalment of the settlement.

I certify that the preceding [50] paragraphs are a true copy of the reasons for judgment delivered by this Honourable Court

Associate