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Parra v Parra

[2003] 1 FLR 942

20/12/2002

Barristers
Private: Jonathan Cohen QC

Court
Court of Appeal

Facts
The parties were married in 1980 and had two children now aged 17 and 16. Together they launched and ran a successful family business in which each held 50% of the shares, and in 1997 they bought a brownfield site for future business purposes in their joint names. Both petitioned for divorce in January 2002. The matrimonial home was sold and the wife received the proceeds. In financial relief proceedings a preliminary issue arose when the wife claimed that the brownfield site should be sold for residential development, thus greatly increasing its value. After a number of hearings, the judge rejected the wife's contention that the site was ready for residential development, and made an order for the wife to have a lump sum of £925,000 in return for her half-share in the company and its premises. In addition she received the benefit of a charge over the premises to guarantee her half of the net gain resulting from future residential development – the 'claw back' provision. The husband was to make periodical payments to each child at the rate of £5,000 pa and was to pay the costs of their education. The overall division of assets thus made resulted in the wife having 54.3% of the assets and established a divergence of 8.6% between the wife and the husband. The husband appealed.

Held
Held – allowing the appeal in part –

(1) This was a fundamentally simple case. The proceeds of sale of the matrimonial home had been used to rehouse the wife and children. The assets, apart from the company and premises, amounted to only £25,000. Each party owned half the issued shares in the company and there was joint ownership of the land. The judge's investigation had been painstaking and exhaustive, but the quasi-inquisitorial role of the judge in ancillary relief litigation gave him an independence which must be matched by an obligation to eschew over-elaboration or speculation as to what the parties might achieve in the future, and to paint the canvas of his judgment with a broad brush. The overwhelmingly obvious solution in this case was the equal division of the family assets. Accordingly, the lump sum should be reduced to £818,641. The parents should contribute equally to future education costs. If the husband did not raise the necessary borrowing to pay off the lump sum within the period agreed, the business assets must be sold and the net proceeds divided.

(2) The imposition of a claw back charge upon the property of either spouse at the conclusion of an ancillary relief case was highly exceptional and plainly inconsistent with the court's duty under s. 25A of the Matrimonial Causes Act 1973. However, in the present case, though the prospect was remote, the scale of the windfall would be great. Furthermore, the husband in his oral evidence had recognised that a claw back would be fair. Therefore, if the husband acquired sole ownership of the land by payment of the reduced lump sum, his ownership would be fettered by a claw back provision restricted in duration to the joint lives of the parties.

Per Thorpe LJ : judges should give considerable weight to the property arrangements made during marriage, and, in cases where parties had opted for equality, reserve the exercise of the adjustive powers to those cases where fairness obviously demanded some reordering.

Per Sedley LJ : in making provision which the parties had agreed should take the form of equal division of assets, the court had to have very good reasons for doing anything but going as nearly as possible down the middle.