

H v H (2008)

[2008] EWHC 935 (Fam) (2008) 2 FLR 2092

26/03/2008

Barristers

Mark Johnstone

Court

Family Division

Summary

Assets of the parties were apportioned following the breakdown of their marriage on the basis of what would be needed by either party and what could be shared between the parties. In the circumstances, a clean break would not be appropriate.

Facts

The applicant (W) applied for ancillary relief following the breakdown of her marriage to the respondent (H). H had been working as a restaurateur and had become a sole licensee of a restaurant. A few years later he married W, and they had two children. They let out their initial matrimonial property and purchased another one. The marriage finally broke down and W filed for divorce. Thereafter, H bought the underlease for the restaurant premises with funding from a bank loan. Subsequently decree nisi was pronounced and H left the former matrimonial home. The marriage lasted 15 years. Both parties sought a clean break. The parties' financial resources included the final matrimonial home, the proceeds of sale of the property that had been let, the restaurant business, their pension funds and other assets. The main factual dispute was the value of the restaurant business. The level of maintenance provision for W and the children was also in dispute. W submitted that there was no justification for departing from an equal division of wealth, that both parties had brought some assets into the marriage and that they counter-balance each other. H submitted that the assets should be divided into pre-matrimonial and matrimonial property.

Held

HELD: The instant case was not a clean break case; there were insufficient resources available for such a result to be fair. It was not possible to draw a clear dividing line between pre-matrimonial and matrimonial property, *Miller v Miller* (2006) UKHL 24, (2006) 2 AC 618 applied and *RP v RP* (2006) EWHC 3409 (Fam), (2007) 1 FLR 2105 considered. On that basis, the court would direct its focus to "need" and "sharing", neither party having submitted that the instant case was one in which compensation had any application, *Charman v Charman* (2007) EWCA Civ 503, (2007) 1 FLR 1246 applied. On the facts, the net value of the restaurant business was £2.5 million and the total available capital was £4.79 million, which included the £2.29 million of non-business assets. The court apportioned both the business and non-business resources between the parties having regard to their living requirements, needs and children's educational requirements.

Permission

Lawtel 