

Robertson v Robertson [2016]

[2016] EWHC 613 (Fam)

08/03/2016

Barristers

Private: Jonathan Cohen QC
Judith Murray

Court

Family Division

Practice Areas

Financial Remedies

Judgment in 'big money' financial remedies case in which Mr Justice Holman considers issues of matrimonial and non-matrimonial property, and special contributions.

The parties, Mr and Mrs Robertson, were married for eleven years and had two children. The assets for division totalled £219 million. Mr Robertson was the founder of ASOS, the online fashion company. ASOS had been launched prior to the relationship in 2000. When the parties began their relationship, the shares were trading at 12 to 8p. When the parties separated, the shares were trading at £67 each.

Mr Robertson's shareholding in ASOS, how the value of those shares should be treated and the extent to which Mrs Robertson should share in their value was the central issue for Mr Justice Holman.

The Husband argued non-matrimonial property and special contribution as reasons for a departure from equality. The Wife followed a *Jones v Jones* [2011] EWCA Civ 41 line of reasoning, employing the concepts of passive and active growth. The value of ASOS shares at the date of cohabitation, uprated by an assessment of passive growth, should be carved out as non-matrimonial. However, the balance of the share value, representing active growth during the marriage, should be divided equally between the parties.

Mr Justice Holman reviewed the comments of Lord Nicholls and Baroness Hale in *Miller; McFarlane* [2006] UKHL 24 on matrimonial and non-matrimonial property [paras 26-27], and clarified that the methodology in *Jones* was "a tool and not a rule" [paras 31-34].

In balancing all the circumstances, and in particular that the Husband had already owned ASOS shares of value before the marriage, but taking account of the fact that those shares had greatly increased in value during the marriage, Mr Justice Holman's award fell between the parties' open positions. The Judge found that much greater allowance must be made for the Husband's work and business than the Wife's open position, but that to ring-fence the pre-matrimonial shares entirely would not be fair to the Wife as they had formed part of the "family economy" [para 62]. Thus "the only fair way" to treat the pre-

existing shares was half as non-matrimonial property to the Husband and half as matrimonial property of the parties to be shared evenly. The overall award then constituted £69 million to the Wife of assets of £219 million, equivalent to 31%.

As to whether the Husband's founding of and entrepreneurial skill at ASOS was a special contribution, Mr Justice Holman considered that it was not [paras 48-55]. The Husband was hard-working, talented and astute, but he was not innovative, revolutionary or extraordinary. Further the Wife had been an excellent home-maker and to treat special contribution as "unmatched" would be "highly discriminatory" [para 55-56].

Permission

 Family Law Week