

Water under the bridge? Adele and short marriages



Emma Spruce barrister at 4PB

Adele's divorce after a short marriage raises some questions on the equality principle, as well as the calculation of the acquit

The news of Adele's divorce in April 2019 was – somewhat perversely – rather pleasing to Adele's fans. It would inevitably mean that Adele would have the material she needed to pen her next album – a guarantee of more highly emotionally charged lyrics which, historically and in relation to her previous relationships, had been responsible for Adele's global success and nearly \$200m net worth. Adele's new album 30, released on 19 November 2021, does not disappoint in this regard. In promoting her new album, Adele has been open and honest that it was inspired by her recent experiences and it is clear that the album both charts the story of her divorce to Mr Simon Konecki (with whom her marriage lasted just one year) and explores the impact of the divorce on the parties' young son, who has born in October 2012.

The principle of equality of sharing upon divorce has been enshrined in the jurisprudence of England and Wales since the landmark case of *White* in the Court of Appeal: "as a general rule, equality should be departed from only if, and to the extent that, there is good reason for doing so". So, would Adele (if she had chosen to divorce in this jurisdiction) be expecting to sign over half her wealth as a result of the divorce, or would the court consider that the short length of her marriage is weighed against that proposition?

The length of a marriage is a factor that the court must take into account according to s25(2)(d) of the Matrimonial Causes Act 1973. This, along with the following other considerations, are taken into account:

- an assessment of the parties' resources (assets and income)
- an assessment of each of the parties' financial "needs" going forward
- the standard of living enjoyed by the family during the marriage

- the conduct of each of the parties (NB: a factor not habitually pleaded due to the high threshold), and
- any contributions made by either of the parties

In July of 2021 the issue of the "sharing" of wealth in the context of short marriages received a fair amount of attention in the wake of a judgment by Mr Justice Mostyn in *E v L* [2021] EWFC 60. The facts of the case were particularly stark insofar as the gulf between the parties' open positions: the wife was seeking a lump sum at final hearing of £5.5m while the husband's position was that her claim be limited to just £600,000. The husband attempted to argue that because the marriage was short and childless, there was not a need for equal sharing and the wife's claim, as a result, ought to be much more conservative. The husband's argument, that – in effect – having no children impacts division was particularly unsuccessful: Mostyn J made abundantly clear that childlessness – in particular – should be "banished" from the consideration. Quoting from Sir James Munby, the judgment states:

"There can be no question of the marriage being a sham. In short, the marriage is a marriage. The fact that it is platonic, and without a sexual component, is, as a matter of long-established law, neither here nor there and in truth no concern of the judges or of the State. One needs look no further than Nigel Nicholson's *Portrait of a Marriage*, his acclaimed account of the unusual marriage of his parents, Vita Sackville-West and Harold Nicholson, to see how happy and fulfilling a marriage, more or less conventional, more or less unconventional, can be. But it is really none of our business. As the first Elizabeth put it, we should not make windows into people's souls."

When considering the length of the parties' marriage and its impact, the judge made a finding as to the length of the relationship as opposed to the marriage. He cited a point in time before the date the parties married at

which the parties could be said to be in a "committed sexual, emotional, physical and psychological, if somewhat itinerant, relationship", as the starting point for the "acquest" (the figure the court will use to divide as opposed to the parties' total collective wealth). The judge also made clear that the date of the trial would stand legitimately as the ending point, making for a length of four-and-a-half years. The judge found no reason to depart from equality. In remarking that this case is "not a white leopard", this case confirms that the principle alone of a short marriage has no bearing on the equality in the division of marital assets. [For more on white leopards, see Amy Baugh's article in the previous issue.]

What, then, is the point of the reference in s25(2) of the Matrimonial Causes Act 1973 to the length of the marriage as being a relevant factor? It is, put simply: the longer the marriage, the more difficult it will be to characterise assets as those accrued during the marriage and those that are clearly pre-marital. The parties' assets and income during a longer marriage are much more likely to become "mingled" and indistinguishable.

For Adele and her ex-husband, on the assumption that the parties met after Adele had already become famous (somewhere between her first and second album perhaps) it is likely that the mass of her "transactions" associated with her career took place before the parties married. In practical terms, Adele's case would likely attract at least one expert valuation (the above case required three valuations) to assist the court in assessing the marital "acquest". There may well be a dispute as to the "marker points" for the

acquest; given that the parties' son was born well before the parties were married, it may well be successfully argued that the marker point for the acquest came much before the marriage itself. If the court were to find that the markers for the acquest span over and above the year that the parties were *de facto* married, then obviously the larger the acquest for division.

So, the answer to the question as to whether Adele would stand to lose half of her total wealth to Mr Konecki upon divorce is in all likelihood: no, she would not automatically stand to lose half of her total wealth. First, it would not only be Adele's wealth taken into account; Mr Konecki may well have substantial wealth both pre- and post-matrimonial and it is the total acquest which stands to be divided. Second, given that it is likely that the court would find that Adele had already founded her career "transactions" prior to the parties' meeting, one could safely assume that some of her own, and perhaps some of Mr Konecki's total "wealth", would be ringfenced from the sum to be divided. Finally, the application of other relevant factors, ie those listed above, which fall beyond the scope of this article, may well have an impact on the starting point of equality. For example, the needs of the parties' young son would be the first consideration for the court, and while there is likely to be more than sufficient resources to cater for his needs, it is possible that the arrangements that the couple seek to make in respect of him drive at a different angle on the principle of equality.

clerks@4pb.com 