

Special Needs of Children in Property Settlement Matters

In the event of separation, parties to a marriage or de facto relationship will have their property divided in accordance with the provisions of the *Family Law Act 1975* ("the Act"). The two main objectives that underline the property settlement provisions of the Act are (1) to finalise the economic relationship between the parties as far as practicable and (2) to provide certainty to parties in the future.

Parties to a marriage must commence property settlement proceedings within 12 months after the date of a divorce order becoming absolute, whilst parties to a de facto relationship must commence property settlement proceedings within two years from the date of separation.

There are four steps to be taken when determining property settlement for both matrimonial and de facto relationships and they are;

1. to identify and value the net property of the parties;
2. to consider the financial and non-financial contributions of the parties and their contributions as home maker and parent – before, during and after the relationship;
3. to consider the future needs of the parties (Section 75(2) factors); and
4. to consider whether the proposed orders are just and equitable.

Steps 2 & 3 above are particularly important for any parent responsible for children with special needs. "Significant weight may be placed on circumstances where one parent was and continues to be responsible for the needs arising from children's health problems, which would give rise to a particular contribution from that parent. More importantly, that parent is also likely to receive a further adjustment for the future care of the children and their greater needs," says Antonious Abdelshahied, lawyer, **Michael Sing Lawyers Pty Ltd.**

In *Rosati v Rosati* [1998], the greater initial financial contributions of the Husband were balanced out by the Wife's care of the three young children, two of whom had serious health problems. In this case, the contributions of the parties were assessed as equal. In relation to the s75(2) factors, His Honour Chisholm J, after noting that both parties accepted 'that the s75(2) factors favour the Wife', briefly summarised what His Honour clearly regarded as the more significant factors which justified that acceptance. There was the husband's much stronger financial position, the wife's care of three young children "with more than usual disabilities" making "entirely reasonable" her current unemployment and the fact that the marriage had obviously interrupted the wife's career as a solicitor. The property pool in this case was about \$1,600,000. His Honour concluded that it was appropriate to divide the assets of the parties 60:40 in favour of the Wife.

In *Clauson and Clauson* [1995], the Full Court said in this case the husband is paying substantial child support and there is no suggestion that he will not continue to do so. It is thus a significant factor which the court should take into account in favour of the husband. But the other s75(2) factors are significant. In addition, it should not be forgotten that the payment of child support in no way compensates the custodial parent for the loss of career opportunity, lack of employment mobility and the restriction on an

independent lifestyle which the obligation to care for the children usually entails. "Accordingly, adjustments to parties to property settlement proceedings who are primarily responsible for children with special needs, should not be limited to just looking after the children, but also the loss of career opportunities, lack of employment and the lifestyle restrictions that are imposed on that parent due to those special needs," says Mr Abdelshahied.

Mr Abdelshahied advises parties with children who have special needs, to obtain some legal advice about their property settlement entitlements in order to ensure that all their personal circumstances are taken into consideration.

If you have an issue involving family law, please contact the **Michael Sing Lawyers Pty Ltd** family law team in Brisbane on (07) 3229 6099 or the Gold Coast on (07) 5597 8888 to arrange a consultation.



Gold Coast Office

9 Ouyan St
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
T +61 7 5597 8888
F +61 7 5597 8899

Brisbane Office

Level 10, 410 Queen Street
Brisbane QLD 4000
PO Box 3246 Brisbane QLD 4001
T +61 7 3226 9034
F +61 7 3226 9001

Please consider the environment before printing this newsletter. We do not waive any legal privilege, confidentiality or copyright associated with the contents of this newsletter. This newsletter has been prepared to provide general information only and does not constitute legal advice. Any material obtained from this newsletter should not be relied upon as a substitute for detailed advice. Michael Sing Lawyers Pty Ltd (ACN 063 095 867) has liability limited by a scheme approved under Professional Standards legislation.