



Melanie Pilmer examines the case of *McCartney v McCartney* and questions how it may impact upon lower asset marriages

In common with many other people going through a divorce the McCartneys both wanted to achieve a clean break upon divorce - an order which provided that neither could pursue any further financial claims against the other in the future and which ensured that Heather received sufficient capital at this stage to prevent Sir Paul from having to make ongoing maintenance payments to her for her benefit over future years.

Background

In its simplest terms the marriage was classed as a short one. Heather and Sir Paul had met in the spring of 1999, were engaged on 22nd July 2001 and were married on 11th June 2002. Their daughter, Beatrice, was born on 28th October 2003 and they separated on 29th April 2006.

As with any other case the McCartneys had been under a duty to try to settle the case prior to the final contested hearing.

On 25th January 2007 Sir Paul had offered to make a lump sum payment to Heather of £16.5m, which added to the assets she already owned would have meant that she would have left the marriage with assets worth approximately £20m.

Heather had sought to receive two properties in the UK and two in the USA as well as being provided with between £8m - £12m to purchase a home in London, £3m to purchase a home in New York and £500,000 - £750,000 to purchase an office in London or Brighton. An overall package which would have been worth in the region of £125m.

Judgment

In making his decision Mr Justice Bennett looked to the criteria that are used in deciding every ancillary relief case - those being to give the first consideration to the interests of any children and then to consider the parties' needs, resources, contributions and the length of the marriage. Since the assets involved exceeded the parties' needs in this case he also went on to consider whether there was a need for any element of compensation for either party.

Duration of marriage

Heather's position was that she and Sir Paul had cohabited since March 2000 and that as a result the appropriate time for the Court to be considering the length of the settled relationship to be was 6 years. That was denied by Sir Paul who stated that they had only been in a settled and committed relationship since the date of their marriage in 2002.

Mr Justice Bennett took into account that up until Sir Paul's marriage to Heather he had continued to wear the wedding ring given to him by his wife, Linda, who had died in 1998. He came to the conclusion that their "true and settled relationship" began upon their marriage and not before.

Recent Court decisions have emphasised that the longer the marriage the more likely it is that the appropriate starting point will be consideration of an equal division of the assets.

Needs

Mr Justice Bennett decided that since Heather had previously stated that she had no intention to work in the USA there was no need for her to have properties there. He allowed £2.5m for her to purchase a property in London stating that if she could have a London base it would be easier for her to increase her earning capacity. Heather had maintained that as a result of bad press and Sir Paul's restrictions on the type of work that she could do during the marriage her current earning capacity was zero. Mr Justice Bennett did not agree with that, but felt that it might take two years for Heather to be able to recover her full earning capacity.

The Court will always look to each parties' earning capacity when trying to decide what resources each has. It may be that if a party has been out of employment for some time, for example looking after children, a period of time will be needed before that party can regain their full earning capacity and during that time that party may need ongoing income from the other party in the form of maintenance.

Heather had stated her income needs as being £3.25m per year. That figure included holidays at £499,000, £125,000 for clothing, £30,000 for horse riding (despite no longer riding), £39,000 for wine (despite no longer drinking) and £542,000 for security.

Sir Paul had been very reluctant for Beatrice to grow up surrounded by security 24 hours per day. He agreed to provide up to £150,000 per year for two years for security which Mr Justice Bennett agreed with.

Of the overall £3.25m sought by Heather Mr Justice Bennett decided that a realistic figure would be £600,000 per year.

Since both parties had wished to achieve a clean break it was necessary for Sir Paul to pay to Heather a lump sum in lieu of ongoing income. The Judge decided a lump sum of £14m was needed for that purpose.

During ancillary relief proceedings parties are asked to provide details of their expenses. As can be seen from this case it is important that those expenses are reasonable and can be proved by documentary evidence if required since otherwise there is a real risk that the Court will not consider them reasonable.

Resources

Heather maintained that she had been wealthy in her own right upon meeting Sir Paul. She stated that Sir Paul had restricted her earning capacity during the marriage by not allowing her to take on lucrative contracts. As a result she sought compensation for that loss of earnings. That again was denied by Sir Paul.

During cross examination Heather stated that she had £2m - £3m in the bank upon meeting Sir Paul, but did not produce to the Court any documentary evidence to that effect. Her tax returns also did not back up her claims of high earnings. That led Mr Justice Bennett to conclude that Heather's case as to her wealth in 1999 had been "wholly exaggerated".

Mr Justice Bennett also found that Sir Paul had not hindered Heather's career opportunities during the marriage, but had actually helped her by publicly supporting charitable and business causes that she was involved with and making donations to such charities.

There was also debate within the case as to the overall level of Sir Paul's wealth. Heather claimed that Sir Paul had been worth over £800m for some years. Sir Paul stated that his wealth was more realistically in the region of £400m.

After hearing evidence from two forensic accountants Mr Justice Bennett decided that the overall level of Sir Paul's wealth was £400m with £39.6 m of that money being built up during the marriage, mainly from

market growth in Sir Paul's pre-owned assets and from his tours. He rejected Heather's claim that Sir Paul was worth in the region of £800m saying that "there is absolutely no evidence at all to support that figure or any figure anywhere near it".

In common with any divorce case a party will always be helped by documentary evidence to back up any claims they make. That is part of the importance of there being full financial disclosure at an early stage in ancillary relief proceedings.

Contributions

Heather alleged that her contribution towards the marriage was "exceptional" stating that she had in addition to furnishing, renovating and maintaining properties also helped Sir Paul to communicate better with his children, counselled him through his grieving for his wife Linda, helped him write songs and assisted with his tours.

Mr Justice Bennett questioned Heather's alleged contribution to the marriage deciding that she had done that which any supporting wife would have in the circumstances. He described her account of exceptional contribution as being "devoid of reality".

Conduct

Mr Justice Bennett also considered whether or not the conduct of the parties should have any bearing upon the financial outcome. Conduct will only be taken into account in exceptional situations and in this case Mr Justice Bennett decided that it was not in anyone's interests for the allegations made by both parties to be considered further.

Arrangements for Beatrice's care

Beatrice will be cared for jointly by Heather and Sir Paul under a shared care arrangement that was agreed between them in June 2002. Her time with her parents will effectively be split equally.

Family courts are increasingly willing to consider such shared care arrangements when deciding long term arrangements for children. As well as being prepared to make joint Residence Orders when a child's time is divided equally between both parents the Courts are increasingly making such Orders when time may not be divided exactly equally in an attempt to avoid one parent feeling that they may have the upper hand over another in parenting a child.

Outcome

Overall Mr Justice Bennett decided that the correct approach to deciding the case was to rely upon Heather's needs interpreted on a generous basis. He decided that the vast bulk of the assets had been accrued prior to the parties even meeting. He believed that considered overall only a small percentage of the assets had been built up during the marriage and there was no need for Heather to be compensated for any loss of earning capacity.

Allowing £14m in lieu of ongoing maintenance payments for Heather and £2.5m for the purchase of a London property the decision meant that when added to her existing assets Heather would leave the marriage with £24.3m of total assets.

As with any case litigation is a risky business. When the Court hears evidence from parties at a contested hearing the Judge may well quickly form an opinion of a party which will influence his decision. Mr Justice Bennett questioned Heather's credibility about the claims she had made which meant that on most occasions he favoured Sir Paul's accounts of matters.

The case shows that it is important that when making offers to settle they are realistic and based upon reasoned argument. The Judge showed his displeasure with what he felt were hugely exaggerated claims made by Heather in saying towards the end of his judgment:

"If the wife considers my adjudication to be unfairly low, then I would say this. In the end it is for the applicant in ancillary relief proceedings to make a rational and logical case for the award that is sought. If an

applicant puts forward an excessive, indeed exorbitant “claim” which she (or he) then attempts to moderate by way of open offers, but which offers still fail to be supported by rational or logical bases, then the applicant has only herself (or himself) to blame if the court awards much less than the applicant expects”.

A more detailed analysis of the case is available upon request.

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