

H v H (Financial Provision: Capital Allowance)

[1993] 2 FLR 335

30/01/1992

Barristers

Michael Sternberg OBE KC

Court

Family Division

Facts

The marriage of the parties took place in 1978 and was dissolved in 1990. There were three children then aged 10, 8 and 5. The husband, a doctor, came of an affluent family from whom he received considerable financial benefits. The wife was qualified as a teacher and a nurse, but when she married had no capital or prospects. The capital she acquired later came from the husband's side of the family. When the proceedings for ancillary relief came before the district judge, the jointly owned assets of the parties (the matrimonial home and a small building society account) were worth £158,000, the husband's assets were worth £242,000 and the wife's £162,000. The district judge made an order that the husband should pay periodical payments to each child of £2280 pa, and periodical payments to the wife of £5700 pa. The wife was to receive £180,000 on the conclusion of the sale of the matrimonial home, thought to have a value of approximately £155,000. It was agreed that the husband would pay the school fees. The district judge increased the wife's capital award to provide a cushion, as ordered in *Re Besterman, Deceased* [1984] FLR 503. The effect of the order was to bring the wife's share in the family capital to 61%, reducing the husband's share to 39%. In reaching his conclusion, the district judge took into account the husband's substantial inheritance prospects, his NHS pension rights, and the fact that altogether both as to income and capital the wife's prospects were not as good as the husband's. The husband appealed.

Held

Held – allowing the appeal –

(1) Taking account of the fact that the husband's mother was only 68 and in good health, and that she had the discretion to leave her assets elsewhere, it had been wrong to treat the husband's inheritance prospects as if they were a vested interest likely to fall into possession within the foreseeable future.

(2) In deciding what weight to attach to the husband's pension rights, it was more important to look at the value of what had been earned during cohabitation than at the prospective value of what might be earned after separation.

(3) In reckoning the capital worth of the spouses, the fact that the wife's substantial independent fortune derived from the husband's family, though a secondary consideration, had nevertheless to be taken into

account.

(4) There was no longer any particular relevance in increasing the wife's allocation by a specific cushion along the lines of the Besterman case, bearing in mind that any specific award of capital must have an evidential justification.

The conclusion to be drawn from the foregoing was that the substantial readjustment to the capital shares had been made without any express rationale and that there was no need to make any capital adjustment between the spouses.

(5) As regards the periodical payments orders, taking into account the real cost to the wife of maintaining the three children, the order for them would be increased, and since, in that event, the wife's net income should be sufficient for her needs, there was no justification for making other than a nominal periodical payments order to her.

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