

S v S (ANCILLARY RELIEF: IMPORTANCE OF FDR) [2007] EWHC 1975 (Fam)

[2008] 1 FLR 944

22/05/2007

Barristers

Private: Jonathan Cohen QC

Court

Family Division

Facts

The husband and wife, now aged 58 and 51, had married in 1983 and thereafter respectively assumed the roles of breadwinner and homemaker/parent. The husband brought a successful career and significant savings (including a work-related pension) to the marriage, and had been highly paid in the oil industry during its course. He took early retirement in 2000 and thereafter undertook some consultancy work. The wife was now employed as a housemistress/classroom assistant. The liquid assets available for division totalled £1,279,336 and the pensions £912,065. There had been unfortunate delays in the litigation and no effective FDR. The total costs represented almost 6% of the assets. The district judge was initially minded to divide the assets equally, but, having ring-fenced and left in the wife's sole ownership two assets (a share in a property and a bond) which she had emanated from her family in 1996 and had been retained by her as separate property during the marriage, divided the assets 17% in favour of the wife. The district judge also concluded that he could not place a figure on the wealth of the wife's parents nor be confident that she would receive any inheritance from them in the future, given their ages and needs. The husband appealed. The district judge had ordered that any appeal was to be heard by a High Court judge.

Allowing the appeal in respect of the division of assets –

(1) This was quintessentially a needs case. Given that each of the parties was relatively young and needed a home, all their monies would be required to fund their lifestyles in the long-term future (see para [44]).

(2) The district judge had been plainly wrong in his approach to wife's assets which had emanated from her parents. Given the background factor of the wife's possible inheritance and the parties' respective needs, it was wrong to ring-fence those assets. All of the assets which came into this marriage had to be available to cover the parties' requirements. Each party had made a full and proper contribution and there was nothing in the factual matrix which permitted a finding that the wife had made an additional contribution in circumstances where the husband had brought assets into the marriage and had worked extremely hard during its existence. It would be unfair and discriminatory to treat as other than equal the

parties' contributions, whenever made. As time went by, all assets became amalgamated and it was inappropriate to omit any from overall consideration (see paras [47]-[53]).

(3) The district judge had heard extensive evidence and argument on the issue of the wife's inheritance prospects. His findings and conclusions thereon were open to him, he had correctly directed himself on the law and his exercise of discretion was unimpeachable. There was freedom of testamentary disposition, the older generation might require their assets and the courts could not assume that monies would be forthcoming (see paras [40]-[42]).

Per curiam: (a) The FDR procedure must be undertaken in an effective way in every case, because it gives parties the opportunity to settle the litigation, to air issues and to have neutral judicial evaluation at a time before costs have denuded assets. As a general principle, where an FDR had not been effective, it was incumbent upon the court to fix another appointment as soon as practicable, which had to come before an experienced tribunal with sufficient time to engage fully with the matter (see para [16]).