HALL v HALL (A7/2016)

Court appealed from: Full Court of the Family Court of Australia

Date of judgment: 7 August 2015

Date special leave granted: 12 February 2016

The appellant wife and respondent husband were married in 2001 and separated in September 2013. On 23 October 2013, the wife filed proceedings in the Family Court seeking orders for property settlement and for spousal maintenance in the sum of $20,000 per month. On 10 December 2013, Dawe J made orders which included an order that the husband pay spousal maintenance to the wife of $10,833 per month, pending final determination of the maintenance and property settlement proceedings. The husband applied to have that order set aside. His application was dismissed by Dawe J on 17 June 2014.

The husband appealed to the Full Family Court (Thackray, Strickland and Eldridge JJ). The Court found that Dawe J had failed to consider, and indeed make any finding as to, whether there was sufficient new evidence before her to discharge the interim spousal maintenance order. The Court was particularly concerned about her Honour's failure to take into account evidence that the wife's late father's will specified that she should receive from a family company an annual payment of $150,000 from the date of his death until she received payment of an amount of $16.5 million from that company. The Court found there were clear indications or inferences to be made from the evidence before her Honour that the wife's brothers (including the executor of the will), who controlled the family company, would carry out their father's wish in this regard.

The Court concluded that the consequence must be that her Honour's dismissal of the husband's application, to the extent that it sought a discharge of the interim spousal maintenance order, warranted appellate interference. They noted that pursuant to s 83(1)(c) of the *Family Law Act* 1975 (Cth), a spousal maintenance order may be discharged "if there is any just cause for so doing". The issue for consideration was whether there was evidence before the Court that demonstrated that the wife was able to support herself adequately.

The Court held that the inference from the evidence relating to the father's will was that, if she requested it, the wife would receive that benefit. The evidence from which that inference could be made was evidence that the wife had a good relationship with her brothers; that it was a wish expressed in the will of their late father; and the brothers had, in the past, provided the wife with late models of luxury motor vehicles. In these circumstances, the Court was prepared to set aside the relevant part of the order made by Dawe J and discharge the order for spousal maintenance made on 10 December 2013.

The grounds of appeal include:

- The Court erred as a matter of law in setting aside paragraph 6 of the orders made in exercise of her discretion by the primary judge on 17 June 2014, being an order dismissing the application of the respondent to discharge an order of 10 December 2013 for interim spousal maintenance :

(1) on the ground that the primary judge had failed to consider the husband's application for discharge of the interim spousal maintenance order;

(2) on a ground which was not raised by the respondent either on appeal or at first instance, namely, that the appellant was able to support herself adequately because she was able to request the V Group to make a voluntary annual payment to her of $150,000.