

STANFORD v STANFORD (P23/2012)

Court appealed from: Full Court of the Family Court of Australia
[2012] FamCAFC 1

Date of judgment: 21 October 2011 and 19 January 2012

Date of grant of special leave: 22 June 2012

This appeal raises a question as to whether the Family Court erred in holding that it had power under s 79 of the *Family Law Act 1975 (Cth)* ("the Act") to order the provision of a substantial capital sum by a husband to his late wife's estate in circumstances where the parties remained married at the time of the wife's death and where, there was no dispute or controversy between the parties relating to property and the wife during her lifetime personally made no claim for property settlement or evinced any intention to make a claim.

The parties in this matter were married in 1971. It was a second marriage for them both. In October 2011 the wife was 89 years old and the husband was 87. On 30 December 2008 the wife suffered a stroke and was admitted to a care facility. On 17 August 2009 she filed an application for property settlement. She sought an equal division of property. The application was brought on her behalf by her case guardian. The husband sought orders that the wife's application be dismissed. The thrust of the wife's case was that a payment of a sum of money was sought on her behalf to provide for her financially in the future. The husband's case was that the wife's needs were adequately met and to the extent that they were not he would maintain her.

The Magistrate made orders that the husband pay to the wife the sum of \$612,931 within 60 days and that upon payment the wife's interest in the former matrimonial home vest with the husband, as well as all personal property, bank accounts and household contents in the possession or name of the husband and that the husband's interest in the personal property and bank accounts in the possession or name of the wife be deemed the wife's absolutely.

The husband appealed. The appeal was heard by the Full Court of the Family Court on 13 April 2011. On 14 September 2011 the wife died. On 21 October 2011 the Full Court allowed the appeal and set aside the Magistrate's orders. The Court held that the Magistrate had erred in determining that the wife needed a sum of money to provide for her future financially or that the level of her care would improve by the making of an order for property settlement.

Following the wife's death both parties submitted that the Full Court should re-exercise the discretion. The Court delivered its decision on 19 January 2012 and ordered that the husband, by his case guardian, pay to the personal representatives of the wife the sum of \$612,931 upon the death of the husband or at such earlier time as may be determined by the case guardian.

The appellant seeks leave to rely on an amended notice of appeal, the grounds of which include:

- The Full Court erred in holding that [it] had power under s 79 of the Act to order that the appellant pay a substantial capital sum to his late wife's estate in circumstances where:
 - Until the death of the wife the marital relationship was still subsisting and it was a happy and loving relationship; and,
 - The wife's daughter as her case guardian initiated and prosecuted a claim on behalf of the wife.

The appellant has filed a notice of a constitutional matter pursuant to s 78B of the *Judiciary Act 1903 (Cth)*. The Attorney-General of the Commonwealth of Australia, the Attorney-General for New South Wales and the Attorney-General for Western Australia are intervening in this appeal.

