



## HIGH COURT OF AUSTRALIA

8 June 2016

HALL v HALL  
[2016] HCA 23

Today the High Court dismissed an appeal from the Full Court of the Family Court of Australia. The High Court held, by majority, that the Full Court had correctly concluded that just cause had been shown for the discharge of an interim spousal maintenance order pursuant to s 83(1)(c) of the *Family Law Act 1975* (Cth) ("the Act").

Under the Act, a person is liable to maintain their spouse to the extent that person is reasonably able to do so, if their spouse is unable to support herself or himself adequately. The appellant ("the wife") and the respondent ("the husband") were separated. The wife commenced proceedings against the husband in the Family Court seeking, among other relief, an interim spousal maintenance order. Her financial circumstances included ownership of two luxury cars which her brothers had purchased for her and an "interest", the value of which she did not know, in the estate of her late father that related to a family business ("the Group") founded by her father and controlled by her brothers. In the absence of information about the nature and extent of that interest, the primary judge did not take it into account as a financial resource of the wife. The primary judge made an interim spousal maintenance order.

The husband applied for the discharge of that order. He relied on new evidence of the father's testamentary "wish[es]" that, first, the wife should receive from the Group a lump sum cash payment of \$16,500,000 in the event of her divorce from the husband, and, second, that the wife should receive from the Group an annual payment of \$150,000 until the date (if any) of the lump sum payment. The wife stated that she had not received any income or capital payment from the father's estate, but did not state whether she had requested payment from the Group. The primary judge dismissed the husband's application for discharge.

On appeal, the Full Court found that the primary judge erred in failing to consider, and make any finding, as to whether there was sufficient new evidence before her to discharge the interim spousal maintenance order. Although the Full Court accepted that the making of the annual payment from the Group would have been voluntary, it found that the wife would have received the annual payment had she requested it of her brothers. The Full Court held that just cause had been shown for the discharge of the interim spousal maintenance order because, on the evidence before it, the wife was able to support herself adequately. By grant of special leave, the wife appealed to the High Court.

By majority, the High Court held that the Full Court's finding that the wife would have received the annual payment had she requested it was well open on the evidence before it. On that finding, the annual payment was both a "financial resource" under s 75(2)(b) of the Act and a "fact or circumstance" under s 75(2)(o) of the Act, relevant to whether the wife was able to support herself adequately. The wife was also on notice of the risk of the Full Court's finding being made, such that she had not been deprived of any opportunity to lead further evidence.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*