



All Relevant Financial Matters Must Be Taken into Account in Spousal Maintenance Cases: High Court of Australia in *Hall & Hall*

High Court upholds appeal decision that wife not entitled to interim spousal maintenance as a result of evidence that the wife stood to gain considerably under her wealthy father's Will

INTRODUCTION

The case of *Hall & Hall* [2016] HCA 23 (8 June 2016) was a family law hearing heard in the High Court of Australia. The matter was brought to the High Court on appeal from a decision of the Full Court of the Family Court of Australia.

This matter was heard by Chief Justice French, Justice Gageler, Justice Keane, Justice Nettle and Justice Gordon of the High Court. The appeal was dismissed by a majority with Justice Gordon dissenting.

This matter concerned a separated Husband and Wife after the Wife commenced proceedings in the Family Court of Australia ("Family Court"). The Wife asked the Family Court to consider the parties' property and financial circumstances and decide how the property between them should be divided. The parties were married in 2001 and separated 26 September 2013. There were 2 children from their relationship together.

The Wife asked the Family Court to consider an application for interim spousal maintenance while the court proceedings were underway. The court granted the Wife's request. The Husband disagreed with the Family Court's decision and lodged an appeal with the Full Court of the Family Court ("Full Court"). The Full Court reversed the Family Court's decision thereby stopping the Husband from having to pay interim spousal maintenance to the Wife. The Wife disagreed with the Full Court's decision and then appealed to the High Court of Australia ("High Court"). The Wife's appeal was dismissed by the High Court.

SPOUSAL MAINTENANCE

Spousal maintenance is payable under section 72 of the Act where one of the parties is unable to adequately support herself or himself because of:

- (a) a child or children under the age of 18;
- (b) age, physical or mental incapacity which hinders employment; or
- (c) for any other adequate reason.

A court must consider section 75 of the Act when determining whether there is an adequate reason to justify spousal maintenance. These factors include but are not limited to:

- the age and health of a party;



- the income, property and financial resources of a party;
- the earning capacity of a party and any affect the relationship had on the party's earning capacity;
- the commitments of each party to support himself or herself, any children or another person;
- the eligibility of a party for a pension, allowance or benefit;
- the eligibility for payments from superannuation;
- the standard of living that is reasonable in the circumstances;
- the period of the relationship and the contributions made by a party to the relationship;
- child support being paid or that a party might be liable to pay for a child of the marriage;
- whether a party is cohabitating with another person and the effect this cohabitation has on the financial circumstances of that party; and
- any other fact or circumstances that in the opinion of the court would be just to take into account.

WIFE'S SPOUSAL MAINTENANCE APPLICATION

The Wife made an application to the Family Court for an order that the Husband pay interim spousal maintenance for \$10,833 per month. The Wife asked that this be paid until determination of the property proceedings between the Husband and Wife.

The Family Court granted the interim spousal maintenance application. The Husband disagreed with the Family Court's decision and filed an application to discharge the interim spousal maintenance order. To support the Husband's case he investigated the Wife's financial circumstances. The Wife's father had passed away in 2009. The Husband discovered that the Wife might have an entitlement under the father's Will. One of the Wife's brothers was administering the father's estate as the Executor. The Husband attempted to subpoena the father's will. The Executor refused to provide a copy of the Will. Instead, a solicitor on behalf of the brother provided an affidavit outlining the potential entitlements that the Wife may be entitled to under the Will as:

1. \$16,500,000 if she divorced; and
2. An annual payment of \$150,000 if the Wife did not divorce.

In the father's Will he stated that the payments were to be paid by a group of companies that the father controlled when he was alive. The group of companies (the V Group) was left to the Wife's 3 brothers. The solicitor on behalf of the brother claimed it was unlikely that Wife could force the V Group to make the payments. The Wife claimed she was unaware of the contents of the father's Will.

The Family Court heard the Husband's application to discharge the interim spousal maintenance order and dismissed the Husband's application. The Husband disagreed with the court's ruling and appealed to the Full Court.



HUSBAND'S APPEAL TO THE FULL COURT OF THE FAMILY COURT

The Husband claimed the Primary Judge from the Family Court was wrong in dismissing his application to discharge the interim spousal maintenance order. The Husband claimed he provided sufficient evidence to show the Wife did not need spousal maintenance to support her.

On the other hand, the Wife provided a letter from her brother who was administering the father's estate. The letter explained that the payments to the Wife in the father's Will were voluntary. The letter stated that the payments could only be made by the V Group by choice of the Directors.

The Full Court concluded that the Family Court had failed to consider all of the evidence from the Husband in the original interim spousal maintenance hearing. The Full Court then considered whether the interim spousal maintenance should be dismissed.

The question before the Full Court was whether there was sufficient evidence that demonstrated that the Wife could adequately support herself. The Full Court inferred from the evidence available that the Wife could receive a payment from the V Group of \$150,000 annually if she requested it. Based on this the Full Court found the Wife could adequately support herself and dismissed the interim spousal maintenance order.

The Wife disagreed with the Full Court's decision and appealed to the High Court.

WIFE'S APPEAL TO THE HIGH COURT OF AUSTRALIA

The Wife appealed to the High Court on two primary grounds being:

1. Failure of process on the grounds that the Husband did not make a submission that the Wife could request the payment from V Group. The Husband only stated the Wife had a legal entitlement to the payment from V Group. The Wife alleged that had the Husband alleged that the Wife could request the payment that the Wife would have submitted further evidence in support of her case.
2. That there were errors of substantive reasoning on two grounds being:
 - a. The evidence did not allow the court to infer that a voluntary annual payment would be made to the Wife upon the Wife's request; and
 - b. That even if the voluntary payment was made, that this would not be a proper basis for the court to conclude that the Wife could support herself adequately within the meaning of section 72(1) of the Act. Further, the Wife claimed that the voluntary annual payment could not be considered as a financial resource under:
 - i. section 75(2)(b) "the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment" of the Act; nor



- ii. section 75(2)(o) “any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account”.

The Husband argued that the annual payment of \$150,000 created an equitable obligation on the V Group to make the payment. The Husband submitted that the Wife was on good terms with the brothers and that this inferred that the payment to the Wife under the father’s Will would be made.

HIGH COURT DECISION AND IMPLICATIONS GOING FORWARD

The High Court determined that the Wife’s claim that the annual payment of \$150,000 could not be included as a financial resource under section 75(2)(b) and section 75(2)(o) of the Act was wrong. The High Court stated that section 75(2)(b) of the Act concerned the practical ability of a party to support himself or herself.

The High Court confirmed the correct interpretation under section 75(2)(b) of “financial resources” as being a source of financial support that a party can reasonable expect to be available. This must be something more than benevolence but the party need not control the financial source. The High Court stated as an example, that a nominated beneficiary of a discretionary trust who cannot control the trustee but can reasonably expect that the trustee will act in their favour has a financial resource under the Act.

The High Court affirmed the long standing ruling on section 75(2)(o) of the Act allowing a court to take into account “all of the financial matters which are relevant”. Based on these grounds the High Court dismissed the Wife’s appeal and upheld the Full Court’s decision.