

McCartney vs Mills:

The relevance to “ordinary divorcing couples”

Reading the headlines, on face value it appears that little can be gleaned from the much publicised divorce settlement of Sir Paul McCartney and Heather Mills that may be of use to divorcing couples of more ordinary means. However, ignoring the size of the sums involved, some of Mr Justice Bennett observations may be of relevance to those other than the “super rich”. Sue Andrews, Partner and head of family law, examines this high profile case and comments on the Judgment received this week.



The outcome

Heather was awarded a total settlement of £24.3 million which comprised a lump sum to be paid by Sir Paul of £16.5 million, plus Heather's own assets which Mr Justice Bennett found were derived “...fairly largely as a result of [Sir Paul's] generosity towards her”.

The issues considered:

Contribution

Heather maintained that her contribution to the marriage was exceptional, and did so, presumably, in an attempt to support the large sum that she was seeking. The Judge rejected Heather's contention and found “her case on this issue to be devoid of reality”. Since the House

of Lords decision in *White v White* in 2000, the Courts' approach has been to consider a division of assets in accordance with the “yardstick of equality” unless there is good reason to depart from that. Some spouses seek to achieve this is by demonstrating that their contribution to the marriage was special or stellar.

The Courts' approach, however, is that one should not seek to promote a case of special contribution unless to disregard it would be inequitable. The Courts' view is that it is not to be found in the minutiae of married life but rather someone alleging special contribution must demonstrate genius. The test is a very hard one to satisfy, and one Heather fell well short of.

Pre-marriage cohabitation / length of marriage

Where parties cohabit and then marry, a Court is likely to have regard to the period of pre-marriage cohabitation when determining the length of the marriage. Heather argued that she and Sir Paul began to cohabit in March 2000 and therefore the length of their marriage was 6 years. Mr Justice Bennett found “*cohabitation, moving seamlessly into and beyond marriage, normally involves in my judgement a mutual commitment by two parties to make their lives together, both in emotional and practical terms ...*” and “*... is normally, but not necessarily, in one location.*”

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There is often a pooling of resources, both in money and property terms."

The Judge found that although Heather and Sir Paul had a very close relationship and had spent many, many nights together, this did not in his judgement "...equate with a settled, committed relationship moving seamlessly into marriage". Mr Justice Bennett therefore found that their true and settled relationship commenced from their marriage in June 2002.

Compensation for lost earnings

Heather claimed that as a result of her marriage to Sir Paul she had missed out on "hundreds" of opportunities to work, either as a model or TV presenter. Now that she was to be divorced, her chances in the "employment market" were limited as she had not worked for a long time, and the bad press generated from the case meant that she was not an attractive employment prospect.

Relationship generated disadvantage is a principle that is recognised where one spouse, more often than not the wife, gives up a lucrative career in order to make a home and care for the children whilst the husband carries on his work. When the

marriage breaks down, the chances for the wife to resume such a highly paid career are very slim and therefore her income prospects have suffered as a result of the career sacrifice she made.

The problem for Heather was that although she asserted that the marriage, and Sir Paul himself, had prevented her from working, the evidence before the Court indicated otherwise. She had relatively recently appeared in the US on "Dancing With The Stars" for which she was paid £200,000 for two months work, and during interviews she spoke of constantly receiving numerous job offers. Mr Justice Bennett also did not accept Heather's evidence about the income she claimed to have had prior to the marriage and he therefore rejected her claim for compensation.

Standard of living

Heather had assessed her income requirements at £3.25 million per year, which the Judge found to be an exorbitant claim. Mr Justice Bennett found that Heather had expected, unreasonably so, that her lifestyle during the short marriage should not only continue but was her entitlement. Although the standard of

living is one of the statutory criteria that a Court must take into account, as the House of Lords said in another high profile case, *Miller v Miller* in 2006, although "the Court has to take some account of the standard of living enjoyed during the marriage.... the provision should enable a gentle transition from that standard to the standard that she could expect as a self sufficient woman."

Mr Justice Bennett was satisfied that £600,000 pa would allow Heather "... to adapt to a standard of living that she could expect as a self sufficient woman. In my judgement after a short marriage to a very wealthy man it is unfair to expect that she should continue to live at the same rate as during the marriage. Such an expectation is completely unrealistic." The implication of this is that although a wife should not be expected to suffer a steep decline in the standard of living that she has become accustomed to, she must, after such a short marriage, not entertain the notion that she can continue to reap the benefits enjoyed from the marriage after it has concluded.

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Frivolous overspending

Mr Justice Bennett found that Heather's assets totalled just over £7.8 million. Sir Paul's lawyers argued that Heather's actual assets should be increased by £1.66 million which represented reckless expenditure during the financial proceedings.

This issue was first considered in the case of *Norris v Norris* in 2003, and was sought because to allow one spouse to fritter away assets by extravagant living or reckless expenditure, and then to claim the same share as the other of what was left, could create unfairness.

However, the test for this is high and there must be clear evidence of dissipation to include a wanton element. Mr Justice Bennett did find that Heather had overspent but was only prepared to add back to her assets a figure of £500,000 representing "completely unreasonable expenditure over the 15 month period" and it was on that basis that he found her total assets to be just over £7.8million. However, as his award to Heather was based upon needs, this did not actually affect the amount of the award.

Conduct of the parties

Another statutory factor is conduct, but the Court can only take conduct into account where it would "in the opinion of the Court be inequitable to disregard it".

In this case, both Heather and Sir Paul argued that regard should be had to conduct, both during the marriage and post-separation. The Courts are, however, very reluctant to take conduct into account and again in the case of *Miller*, Baroness Hale of Richmond said: "*it is simply not possible for an outsider to pick over the events of a marriage and decide who was the more to blame for what went wrong, save in the most obvious and gross cases.*"

The Courts are extremely reluctant to become involved in matters of who was to blame, and in this case Mr Justice Bennett decided that the issue of conduct was not going to assist him in arriving at a fair Judgment for an award of financial provision. As already stated, his view was that the compelling factor was one of need.

Fairness / needs

In this case, the Judge found that he was dealing with a situation where:

- The vast bulk of the Sir Paul's fortune was made not only before marriage but also long before the two met.
- There had been very little, in terms of the resources, marital acquest, i.e. the resources had increased, proportionately, by very little during the marriage (he found an active increase of £21.4million)
- The issue of compensation did not arise
- The marriage was short
- The standard of living lasted only so long as the marriage
- Beatrice was provided for

And so, in his view, fairness required that Heather's needs should be the dominant factor. Mr Justice Bennett was of the view that "*any other radically different way of looking at this case would, in my judgment, be manifestly unfair*". Thus, in addition to retaining her own assets (which primarily consisted of properties he felt she should retain), she should be able to purchase a property in London "*a flat costing £2.5million inclusive of stamp duty and legal fees*

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and furnishings seems to me to be reasonable” and that her own income needs, which he had found to be £600,000 per year, should be capitalised at £14 million (taking into account her earning capacity which he found would be £75,000 in 2 years time) in order to achieve a clean break which the Courts are directed to achieve where possible.

It is clear from this case, and other recent authorities, that where a marriage is short and resources have not been acquired jointly, an award should be based upon the needs of the Applicant. These needs will be interpreted generously where the standard of living has been high and there are significant assets.

Warning

Mr Justice Bennett did give a word of warning in his Judgment that any Applicant in financial proceedings must make a rational and logical case for the award that is sought. He continued: *“if an Applicant puts forward an excessive, indeed exorbitant, claim which then she (or he) attempts to moderate by way of open offers, but which offers still fail to be supported by a rational and logical basis, the Applicant has only herself (or himself) to blame if the Court awards much less than what the Applicant expects.”*

Heather, while recommending that more people should act as litigants, has claimed that the Courts do not want people to conduct their own litigation.

However, it must be noted that she had had two sets of lawyers and was (until November last year) represented by experienced solicitors, a Queen's Counsel and Junior Counsel. Additionally, in presenting her case, she had the assistance of three McKenzie friends to include a UK Solicitor Advocate and an American Attorney. Thus, she had the distinctive benefit of experienced legal brains and was also afforded every opportunity by the Court of properly presenting her case.

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