

The "How To" of Spouse Maintenance

Spouse maintenance is often an important issue for spouses after separation. The level of financial support provided by one spouse to the other affects not only the spouse in need but the children of the relationship as well.

If a negotiated agreement can't be reached it may be necessary to make an Application to Court for spouse maintenance. A recent case provided a timely reminder of some of the important factors to consider when making such an application. In the case the Court considered the Wife's application for spouse maintenance on an Interim basis.

Facts:

- The couple had been married for over 10 years and there were 2 children of the relationship;
- During the marriage the husband was the main breadwinner, whilst the wife was the children's main carer;
- The children continued to live with the wife after separation and see their father on alternate weekends as well as some mid-week time;
- The wife's evidence was that the funds she had available to her was \$880 per week. This included her wage from a part-time job, social security and rent assistance and child support. Her expenses were \$1,096 per week.
- The husband's evidence was that his income was \$1,511 per week and his expenses were \$1,504. It was his position at the Interim Hearing that he could not pay spousal maintenance.
- There was a Trust with assets worth an estimated \$1 million. The husband controlled the Trust.

Considerations for Spouse Maintenance:

- Spousal maintenance is essentially concerned with issues of 'need' and 'capacity'.
- *Threshold Issues:* 1. One party is reasonably able to maintain the other.
2. The other party is unable to support him or herself adequately.

- The legislation provides that any income tested pension, allowance or benefit is to be disregarded, i.e. Centrelink payments, Family Tax Benefits, Austudy and Abstudy, Service Pensions under the *Veterans' Entitlements Act*.
- The word "adequate" in the 'threshold issue' (above) is not to be determined according to any fixed or absolute standard. Adequate support does not mean a subsistence level.
- The parties' standard of living may have to be lower if financial resources are insufficient to maintain the standard they had pre-separation.
- It is not necessary for an applicant for maintenance to use up all capital in order to satisfy the requirement that he/she is unable to support himself/herself adequately.
- However, an applicant is not entitled to live at a level of considerable luxury merely because the other party is very wealthy.

Held:

- That the wife was not able to support herself adequately (the wife was not paying her way, whereas the husband was);
- That even though the evidence was that the husband's expenses and income came close to being equal that was not the only issue for the court's consideration. The Court should conduct an objective assessment of the husband's overall financial circumstances to determine whether it was reasonable that he provide some form of interim recurrent financial support to the wife.
- It was relevant that the husband controlled a trust with assets of \$1 million, and therefore his financial resources must be considered as they were grossly disproportionate to that of the wife.

Order:

- The Court ordered that the husband pay the wife \$200 per week, each week, until the final hearing.