

WHO STAYS IN THE HOUSE?

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Following separation if a couple are unable to live separated 'under the one roof' and cannot reach agreement for one of them to leave the house, either of them can apply to the court to obtain an order for exclusive occupancy. A recent case provides a useful insight into how to determine an interim order for exclusive occupancy.



The Facts

- The couple separated after a relationship of 20 years. The husband was 61 and the wife was 59. They had two children aged 19 and 16. The wife commenced property proceedings and sought interim orders restraining the husband from residing in the home and providing her with exclusive occupancy. At the time of the wife's application the couple had already been separated 'under the one roof' for one year.
- The wife submitted that the husband refused to vacate the property and she had observed him to be under the influence of alcohol on occasions. She presented a report from her GP in which her doctor diagnosed her to have insomnia and situation anxiety fears. She also presented that the children were starting to suffer from the stress and that their relationship with the father was strained.
- The wife was concerned that without an order for sole use and occupancy from the court, the husband would remain in the home until property proceedings between the husband and wife were resolved on a final basis.

The court found that the discrimination in the house had heightened over the months leading up to the application.

- The court did not accept that the husband did not have funds available to him to obtain alternate accommodation. While the husband claimed to be retired, he remained a property investor through the parties' company that derived significant income from rental investments. The court found that the husband had better income and capital assets available to him than the wife to rehouse himself.

Court Held

- That the husband vacate the house within 7 days and after that time the wife be able to exercise sole use and occupancy of the property.

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