Barristers' Chambers

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Robson v Robson [2010] EWCA 1171 Issue 23
Robson v Robson – Inherited wealth and extravagant living – the fair division

Introduction:

1. This decision of the Court of Appeal takes a refreshingly common sense approach to the fair division of resources on divorce between parties, who had been fortunate enough to inherit large wealth from the Husband's late father and had, thereafter, lived a married life intent, as second generation recipients, on spending the same on their own enjoyment.

The Facts:

2. At the date of trial, the husband was 66 and the wife was 54. Their marriage had lasted 21 years and they had 2 children aged 20 and 17. The husband's capital resources were valued at £22.3m, including an Oxfordshire estate worth £16m – the same had been mostly inherited. The wife's resources were valued at £343,500.

3. Charles J. had ordered that, subject to decree absolute, the husband pay the wife a lump sum of £8 million on or before 1st January 2010. Specified properties were to be placed on the market on or before that date and sold at the best price reasonably obtainable as soon thereafter as was reasonably practicable. Provision was made for the transfer to the wife of a large number of valuable chattels. The husband was to pay the wife maintenance pending suit and thereafter periodical payments at the rate of £140,000 per annum from 9 July 2009 until the lump sum was paid in full whereupon a clean break was to be effected. The two children of the family were to receive maintenance at the rate of £15,000 per annum each. The Husband sought leave to appeal.

Court of Appeal:

4. The Husband's claim that the estate was part of a 'dynastic' plan to pass on to the next generation had been roundly rejected at first instance by Charles J, in the light of the extravagant spending in the marriage without regard to the longer term interests of the wider family

> '227. In short, as a couple they were living off the wealth inherited by the husband and in a manner and at a level that focused on their own enjoyment and sporting passions rather than on preserving the inheritance for their children and future generations.
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> 228. It follows that increases in the value of the inherited assets since the marriage are essentially based on general increases in the value of land and it cannot fairly be said that the parties, through their joint effort, have in their different ways created, enhanced or preserved the value of the assets available for division between them or the making of an award.'

The Court of Appeal endorsed this view [para 36].

5. The Wife, who was herself an accomplished horsewoman, had been the main carer in the marriage and the children would remain with her and the Court accepted the Judge's findings that she needed a country house based upon his finding that:-

> "262. A central and important part of the parties' lifestyle has been their home and related activities. So in my view a relationship generated need includes a substantial and attractive home with stabling and some land for the wife both before and after the children leave home.'

The evidence of the level of need in this respect was incomplete and the Judge had to estimate the same at £5m. In the light of later evidence of the Wife's actual housing costs, the Court of Appeal was able to moderate that to £4.3m.

6. After analysing the accounts of the parties' past spending, the Judge had concluded that the overall spending after divorce should more responsibly be trimmed back and stated:-

> '274. In my judgment, to match the standard of living enjoyed during the marriage it would be fair to take a sum of about £100,000 plus horses, say, £135,000 to £145,000. This allows for some flexibility if the wife should decide to buy a London property as well as a country home. It does not include an ability to save if she maintains the rate of personal expenditure during the marriage but if she cut back she could make some savings and if she has a mortgage-free house that is an asset she could pass on to the children, or whoever she pleases, or sell to release funds.'

7. The Court of Appeal agreed that there was room for more savings, especially as the Judge had found their spending extravagant and reckless. Ward LJ stated:-

> '76. Since they had drawn upon capital to support their lifestyle, there can be no complaint about the fact that the judge required the inherited property to continue to be the source to fund the wife's future income needs. Given the husband's age, lack of earning capacity, and the loss of the farm income, he could hardly provide future support for the wife otherwise than by continuing to use his capital resources. The question is, however, whether the judge was correct to continue providing support at

> the level to maintain "the standard of living enjoyed by the family before the breakdown of the marriage". True it is that that is the statutory factor to which the Court must have regard pursuant to section 25(2)(c). Ordinarily that would be the right approach. But this is not an ordinary case. First, the capital is inherited capital and as such deserves a special consideration. It is not to be inviolate having regard to the length of time during which and the extent to which the parties had relied upon it to subsidise the lifestyle they had individually, and jointly, established for themselves. Secondly, and more importantly, the circumstances of the case are relevant and the circumstances here are that they plundered the inheritance to indulge in a lifestyle which their income and efforts could not justify. They were living beyond their means. On the judge's findings it was the husband who was mainly at fault for failing to maximise the income of the estate and he, a trained accountant, was also at fault for permitting the state of affairs which tolerated enjoying the good life at a level which could not be afforded had prudence, and not profligacy, been the watchword. He is rightly criticised for his extravagance. But the wife does not escape criticism. As the judge found at paragraph 226 (see [36] above). She was fully aware that they were living on a mismanaged inheritance, that the level of expenditure to support their lifestyle meant that the nature and consequence of that lifestyle, as the second generation in possession, was that the inheritance was being enjoyed to the full and put at risk rather than enjoyed and nurtured by them. In other words, she was complicit in their prodigality.
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> 77. It seems to me, therefore, to be inconsistent to criticise them, albeit one more than the other, for being recklessly wasteful of their bounty, a criticism which carries with it the implication that it ought reasonably to cease and that a more moderate lifestyle was called for in the future, yet at the same time, to allow the wife to live in the same extravagant way as she inappropriately had in days of yore. It also seems to me to be unfair to the husband to expect him to continue to plunder the inheritance in order to continue to maintain his former wife at a rate found to be beyond his means…'.

Hence, the Court of Appeal discounted the amounts used by the Judge by another 10% [para 91] and overall for her housing and future needs concluded the Judge's award of £8m inclusive of her cost needs could be scaled back to £7m. In the process, the Court of Appeal rejected the argument that the alternative of secured maintenance for life was appropriate.

8. Ward LJ took the opportunity to summarise the Law's approach in such cases:-

> '43. How then does the court approach the "big money" case where the wealth is inherited? At the risk of over-simplification, I would proffer this guidance:
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> 1. Concentrate on section 25 of the Matrimonial Causes Act 1973 as amended because this imposes a duty on the Court to have regard to all the circumstances of the

case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18; and then requires that regard must be had to the specific matters listed in section 25(2). Confusion will be avoided if resort is had to the precise language of the statute, not any judicial gloss placed upon the words, for example by the introduction of "reasonable requirements" nor, dare I say it, upon need always having to be "generously interpreted".

2. The statute does not list those factors in any hierarchical order or in order of importance. The weight to be given to each factor depends on the particular facts and circumstances of each case, but where it is relevant that factor (or circumstance of the case) must be placed in the scales and given its due weight.

3. In that way flexibility is built into the exercise of discretion and flexibility is necessary to find the right answer to suit the circumstances of the case.

4. Like every exercise of judicial discretion, the objective must be to reach a just result and justice is attained when the result is fair as between the parties.

5. Need, compensation and sharing will always inform and will usually guide the search for fairness.

6. Since inherited wealth forms part of the property and financial resources which a party has, it must be taken into account pursuant to subsection 2(a).

7. But so must the other relevant factors. The fact that wealth is inherited and not earned justifies it being treated differently from wealth accruing as the so-called "marital acquest" from the joint efforts (often by one in the work place and the other at home). It is not only the source of the wealth which is relevant but the nature of the inheritance. Thus the ancestral castle may (note that I say "may" not "must") deserve different treatment from a farm inherited from the party's father who had acquired it in his lifetime, just as a valuable heirloom intended to be retained in specie is of a different character from an inherited portfolio of stocks and shares. The nature and source of the asset may well be a good reason for departing from equality within the sharing principle.

8. The duration of the marriage and the duration of the time the wealth had been enjoyed by the parties will also be relevant. So too their standard of living and the extent to which it has been afforded by and enhanced by drawing down on the added wealth. The way the property was preserved, enhanced or depleted are factors to take into account. Where property is acquired before the marriage or when inherited property is acquired during the marriage, thus coming from a source external to the marriage, then it may be said that the spouse to whom it is given should in fairness be allowed to keep it. On the other hand, the more and the longer that wealth has been enjoyed, the less fair it is that it should be ringfenced and excluded from distribution in such a way as to render it unavailable to meet the claimant's financial needs generated by the relationship.

> 9. It does not add much to exhort judges to be "cautious" and not to invade the inherited property "unnecessarily" for the circumstances of the case may often starkly call for such an approach. The fact is that no formula and no resort to percentages will provide the right answer. Weighing the various factors and striking the balance of fairness is, after all, an art not a science.'

9. Hughes LJ added:-

> '95. That the origin of assets in inheritance is a relevant factor for the court in no sense means that the approach to inherited assets ought always to be the same. What is fair will depend on all the circumstances; those cannot exhaustively be stated but will often include the nature of the assets, the time of inheritance, the use made of them by the parties and the needs of the parties at the time of trial. In the present case, although the assets were inherited from the husband's family, the parties had jointly elected to live off them and, in effect, to use them as a substitute for earned income. There can be no possible complaint about an order which treated the capital in this case in the way the parties had themselves jointly treated it. Moreover, in this sort of family circumstance the conventional distinction which may be made elsewhere between capital and income ceases to have the significance it may have for others. That is true also of other family situations, especially when the capital is the result of income accumulated with a view to it supporting the family lifestyle in future, for example in retirement.'

Commentary:

10. This case highlights the approach to the wealth of the parties on divorce when, substantially, unearned or inherited and introduced from one side only. In such cases, the sharing principle is, clearly, less important than needs.

11. In such a situation, fairness in outcome and the 'ultimate objective' require the Court to use evidence of the parties' own approach as to the use of the wealth during the relationship as a guide to where fairness in division on divorce lies. In essence, the capital fund representing the Hall and estate had been used, primarily, as an income resource by the parties and neither could complain if the same was, again, used in this same way to measure and provide for their future accommodation and maintenance needs upon divorce. This, again, echoes Charles J in **J v J [2010],** where he considered under 'conduct' that the parties' own choices were relevant.

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