STANDISH

1 Hare Court Summary

Facts

1. The appellant wife is aged 57. She was born in Australia. The respondent husband is aged 71. He was born in the UK and moved to Australia in 1976. There he commenced what became a highly successful career in the financial services industry. In 2003, he was appointed Chief Financial Officer of UBS Group and consequently had to move to Switzerland. He retired in October 2007.

2. This was a second marriage for both parties, and each had three children from their first marriage. The parties began their relationship in 2003. In June 2004, the wife and her three children from her first marriage moved to Switzerland to live with the husband. Moor J determined this was the start of the martial partnership. They married in 2005. The marriage produced a son (now aged 19) and a daughter (now aged 18). When the husband retired in 2007, the family returned to live in Australia, before moving to England in 2010.

3. It was common ground that, at the commencement of the marital partnership, the husband owned significant assets which had been earned by him during his career to that date. It was the husband's case that he had pre-marital assets worth £57m (as at 2004).

4. In or around April 2017, following estate and tax planning advice received from specialist solicitors in 2016, the husband gifted to the wife investments with a total value of £77.8m - £80m by the time of the final hearing ("the 2017 Assets"). The marriage broke down in early 2020 and, at that time, the 2017 Assets remained in the wife's name.

Held

5. Dismissing the wife's appeal, the Supreme Court held that the following five legal principles are relevant to the application of the sharing principle

    a. First, there is a conceptual distinction between matrimonial property and non-matrimonial property which, in general terms, turns on the source of the assets.

Title is not determinative in deciding what is and what is not matrimonial property (see para [47]).

b. Second, the white leopard has been caged: the sharing principle applies to matrimonial property and does not apply to non-matrimonial property (see paras [48]-[49]).

c. Third, although there can be justified departures, equal sharing of matrimonial property is the appropriate and principled starting position (see para [50]).

d. Fourth, non-matrimonial property may become matrimonial property. Matrimonialisation is the process by which this occurs. In respect of matrimonialisation:

    i. Wilson LJ's obiter dicta at paragraph [18] of *K v L* were endorsed and it was clarified that the three situations identified were not exhaustive (see paras [51]-[52]).

    ii. The concept of matrimonialisation is neither narrow nor wide (see paras [51]-[52]);

    iii. Matrimonialisation rests on the parties, over time, treating the assets as shared. What is important is to consider, how the parties have dealt with the asset over time and whether the facts demonstrate that, over time, they have treated the assets as shared between them. The period of time must be sufficiently long for the parties' treatment of the asset as shared to be regarded as settled (see paras [51]-[53]).

    iv. The parties' intentions are important as to whether an asset is or is not matrimonialised. There must be an intention to benefit the other spouse, not just the parties' children (see para [53] and [62]).

    v. The sharing principle aims to achieve a fair outcome. The parties' treatment of non-matrimonial property as being shared between them, is central in deciding the fairness of treating that property as matrimonialised.

e. Fifth, tax saving schemes whereby one spouse transfers an asset to the other spouse do not normally show that the asset is being treated as shared between them, regardless of the time period involved. Where a capital asset has been transferred between spouses to save tax, compelling evidence will be required to establish that the parties have treated the asset as shared between them.

6. There was nothing to show that, over time, the parties to this case had treated the 2017 Assets as shared between them. The transfer was pursuant to a scheme designed to save inheritance tax and was for the benefit of the parties' children, not the wife. The parties' intention was that the 2017 Assets should not be retained by the wife but should be used by her to settle trust for the children (see paras [61]-[62]).

7. The sifting exercise performed by Moylan LJ in the Court of Appeal by which he identified that the 2017 Assets comprised 25% matrimonial property (earnings of the husband during the marital partnership) and 75% non-matrimonial property (pre-marital assets), was upheld. As there was no matrimonialisation, the sharing principle applied only to the 25% of the 2017 Assets that were earned during the marriage (see paras [57], [58], [61], and [63]).

8. The decision and order of the Court of Appeal should be upheld and the appeal dismissed (see paras [64]-[65]).