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**IN THE FAMILY COURT
AT TIMARU**

**FAM-2014-076-000183
[2016] NZFC 1676**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	MARALYN VANN Applicant
AND	JOHNATHAN FAY Respondent

Hearing: 15, 16 and 17 February 2016

Appearances: R List and F Tewnion for the Applicant
A Shaw and C Clifford for the Respondent

Judgment: 7 March 2016 at 11:00 AM

RESERVED JUDGMENT OF JUDGE M B T TURNER

Introduction

[1] This is an application under the Property (Relationships) Act 1976 (the Act) for the division of relationship property following the end of the parties' de facto relationship.

[2] Beyond acceptance that for a period they had lived together as a couple for a period of at least three years and six months (commencing October 2008), the parties disagreed about virtually every aspect of the relationship. However, prior to or during the hearing:

- (a) The applicant, Ms Vann abandoned:
 - (i) An argument that their de facto relationship commenced prior to Labour Weekend (October) 2008.
 - (ii) Her claim to share in the increase in value of Mr Fay's separate property (the farm prior to its subdivision and sale).
- (b) The respondent, Mr Fay abandoned:
 - (i) An argument that the relationship was less than three years in length.
 - (ii) An argument that if the relationship was greater than three years in duration the Court should exercise its discretion and treat it as a relationship of short duration.

Issues

[3] Consequently, I am required to determine the following issues:

Classification of Property

- (a) Whether the property at [address deleted] is a home or homestead.
- (b) The classification of certain motor vehicles.

Division of Property

- (c) Whether grounds exist to depart from the provisions of the Act as to equal sharing of relationship property.

General Background

Applicant, Ms Vann

[4] Ms Vann was born in 1971. She is the mother of two children, Edgar (born in 1996) and Rachyl (born in 1998). She married their father in 1994, separating in 2001 when living in Rangiora. The children remained in her care following separation.

Respondent, Mr Fay

[5] Mr Fay was born in 1949. He is now a retired farmer. For decades he and his then wife, Mrs Leta Fay, resided at [address deleted], farming approximately 152 hectares of land. They raised their five children on the property.

2002-January 2005

[6] Following separation from her spouse, Ms Vann decided to move from Rangiora to the Pleasant Point area to be closer to her parents. They knew Mr and Mrs Fay who had a cottage on their farm which was available for rent.

[7] In 2002 Ms Vann and her children moved into the cottage. She was not in receipt of an income beyond a benefit and agreement was reached whereby she would undertake general work around the farm thereby reducing her rent.

[8] In late 2004 one of the Fay's children, Franklin, attempted suicide by hanging in one of the farm sheds. He was rescued by Mr Fay. Mrs Fay's unwillingness to assist and her later attitude towards Franklin resulted in a significant deterioration in the relationship between husband and wife.

[9] Following this event Mr Fay began to confide in Ms Vann. He frequently visited her cottage, having a cup of tea, something to eat and a chat. An emotional connection developed, ultimately flourishing into a sexual relationship by late 2004.

[10] Mrs Fay became aware of this in January 2005. She and Mr Fay then separated, he leaving the home and taking up residence in the cottage. In turn Ms Vann and her children moved from the cottage, initially to her parents' home at Pleasant Point.

2005-October 2008

[11] During this period the parties continued to see each other with Mr Fay visiting Ms Vann at her parents' home and later at a property she rented.

[12] In 2006/2007 Mr Fay resolved relationship property issues with his former wife. To pay her out he was required to sell half of the farm, which he did, to his brother. Mr Fay moved back into the farm house upon Mrs Fay's departure. The parties continued seeing each other until Ms Vann declined Mr Fay's marriage proposal in late April/early May 2006. At that point their relationship came to an end.

[13] Although the sequence of events is not entirely clear, in March 2007 Mr Fay travelled to the Philippines where, in the jungle, he met a woman, Tala.¹ She was 16 years of age. Nine days after their meeting Tala travelled to New Zealand to live with Mr Fay at the farm house. They later became engaged to marry.

[14] At some point, not entirely clear from the evidence, the parties reconnected. Despite living with Tala, Mr Fay resumed his relationship with Ms Vann, regularly

¹ [Party name information deleted].

visiting her home, spending time with her and her children, including taking them out for trips and eating meals together. The parties' sexual relationship recommenced.

[15] Shortly before October 2008 Ms Vann's mother became concerned about the relationship between her daughter and Mr Fay. It can be inferred from the evidence that she felt her daughter was being "strung along". Consequently, she confronted Mr Fay and/or Tala. Although there was some dispute as to what exactly she said, it resulted in a decision by Mr Fay to terminate his relationship with Tala and have Ms Vann and her children move into the farm house.

[16] On Ms Vann's evidence, Tala moved out during Labour Weekend 2008 and on the same day she and the children moved in. Mr Fay believed there was a gap of several days between Tala moving out and Ms Vann and the children moving in. Be that as it may, both agree that over Labour Weekend 2008 the parties commenced living together at [address deleted].

October 2008-May 2012

[17] The parties lived together at [address deleted]. Mr Fay farmed the remainder of his farm for a period before selling his stock and leasing the farm land for grazing purposes. The income from this activity was generally sufficient to meet the outgoings of the household.

[18] Ms Vann did not work. She had the prime responsibility for the running of the household and the raising of her children, receiving child support from the children's father.

[19] In late 2011 Mr Fay was led to believe by his son, Franklin, that Ms Vann and Mr Kelvin Fay (Mr Fay's nephew) were involved in a sexual relationship. He did not discuss this with either Ms Vann or Mr K Fay. In fact the matter was not raised with Ms Vann until after lawyers became involved in 2013.

[20] In December 2011, Mr Fay sold the balance of his farm, except for the farm house and paddock adjoining it, to a Mr Baxter.

[21] In May 2012, as a consequence of friction between Mr Fay and Ms Vann's children, she and the children moved from [address deleted] into rental accommodation.

May 2012-December 2012

[22] Mr Fay assisted Ms Vann and the children move into a flat, paying the bond and rent until approximately December 2012. He assisted in the purchase of additional furniture for the flat and the parties continued to see each other. Although Mr Fay suggested that no further sexual activity occurred between them Ms Vann maintained it did. Furthermore, Ms Vann claimed she regularly spent the night at [address deleted] and attended to housework and gardening there.

[23] Ms Vann subsequently obtained employment at [occupation deleted].

[24] In December 2012 the parties spoke at the Pak'N Save carpark. Mr Fay proposed marriage to Ms Vann. She turned him down. Shortly thereafter Mr Fay ceased paying the rent on Ms Vann's flat and she in turn decided not to continue the relationship.

[25] Despite this the parties remained on reasonable terms and in January 2013 Ms Vann lent Mr Fay \$7000, which he subsequently repaid.

Duration of Relationship

[26] The parties lived together as a couple at [address deleted] from October 2008 until May 2012, three years and seven months.

[27] A de facto relationship can also exist where parties reside at separate addresses² and I find this occurred in this instance. The separation in May was not

² *Scragg v Scott* (2006) 25 FRNZ 942 (HC) at para [40]

brought about by a desire by either party to end the relationship but as a consequence of difficulties between Mr Fay and Ms Vann's children. Living at different addresses did not alter the nature of their relationship.

[28] While I am not able to determine a precise date marking the end of the de facto relationship, I find that it occurred in December 2012, after Ms Vann declined the marriage proposal.

[29] Thus the relationship was one of four years and two months.

Issue One: Is the property at [address deleted] a home or homestead?

Introduction

[30] It is accepted that the family home was situated at [address deleted].

[31] The dwelling sits on a block of land comprising 4.2180 hectares (Certificate of Title [reference number deleted]). That land ("the home block", consisting of the farm house and an adjoining paddock) was originally part of a farm owned and operated by Mr and Mrs Fay. Initially comprising around 152 hectares, it was first subdivided in or about 2006 when approximately half of the land was sold to Mr Fay's brother so as to enable payment to Mrs Fay in satisfaction of her relationship property claim against Mr Fay. Later, the balance of the land, save for the home block, was sold to Mr Baxter, settlement occurring in December 2011. Thus the home block is the remnant of a farm property which Mr Fay farmed for over 40 years. It is clear he has a strong emotional attachment to the property.

[32] Mr S Binnie, a registered valuer engaged by the parties to undertake a valuation of the home block, described it in this way:

This is an irregular shaped property having approximately 120 metres frontage to [name of road deleted] and approximately 337 metres frontage to [name of road deleted]. The parcel is roughly rectangular in shape and has a reasonably level contour. The property is crossed at approximately 2/3rds depth by a paper road which legally splits the property in two. However the road has never been used as such and is unlikely to ever be used because the current [name of road deleted] formation is adequate. Soil type is Templeton silt loam or similar. Power and telephone are connected to the existing house on site. Effluent drains to a modern "Oasis Clearwater" effluent

system. Domestic water is taken from the Downlands scheme. Zoning of this and surrounding properties is Rural 1 under the Timaru District Councils Operative District Plan.

Improvements Description

The principal improvement comprises a large home of mixed age. Gross coverage is 341m² including attached garaging 117m². The original eastern portion of the house appears to be quite old, has bluestone piles and was probably built circa 1900. There are additions of varying age, the most recent incorporating a large garage with internal access on the western side of the house. This and the adjoining dining area etc has concrete slab flooring. The house has hardiplank exterior cladding, mostly timber window joinery with aluminium windows in the western addition, corrugated iron roofing and coloursteel spoutings. The interior gibraltarboard linings, predominantly timber floor, concrete flooring in the western addition. Heating is provided by a Wamsler solid fuel stove in the dining room and a log fire in the lounge.

[33] Mr Binnie then described the five bedrooms, bathroom, lounge, kitchen, dining room, office and a three car garage, concluding that:

The house appears to be in average condition. Exterior paint work is average. Interior decoration is tidy/average.

He described the chattels comprising:

Average quality carpets, drapes and blinds. All chattels are in average, moderately worn condition.

[34] Other buildings and improvements were described as:

Implement shed 126m² a four bay shed constructed of timber frame with corrugated iron cladding. Three bays have open front and earth floor. A single bay comprises a fully enclosed workshop with concrete floor. This building is in average condition.

Hay shed 122m² constructed of fabricated steel framework with corrugated iron roof and corrugated iron on two sides, earth floor, in fair-average condition.

Woolshed 153m² constructed of corrugated pile foundations, timber frame with corrugated iron cladding, slatted timber floor and having timber pens. Appears to be in fair condition.

Granary 126m² now used as a garage/workshop constructed of timber frame with corrugated iron cladding and concrete floor, access via two tilt doors and one high sliding door. In fair condition.

Woodshed/fowlhouse 27m² constructed of timber frame with corrugated iron cladding, part bird mesh and having concrete flooring. In average condition.

Tunnel house an aluminium framed building with polythene cladding.

Other improvements

Wide coloured concrete driveway/parking area at the front of the house, concrete rear yard/patio with verandah over part, Downlands water tank and pressure pump, 30,000 litre inground concrete rain water tank, Oasis clear water effluent system, post and wire/post and netting boundary fences with internal subdividing the property into a house site, yard and paddock. Galvanised pipe sheep yards, timber cattle yards, landscaped gardens around the house are reasonably attractive, established trees, garden borders with hardwood edging, shrubs and lawns etc. Generally well presented.

[35] In terms of a homestead Mr Binnie said:

The “homestead” portion of this valuation includes the house, carpets and drapes, land around the house approximately 4400m² which includes the gardens, effluent field and pond, garage attached to the house, woodshed/fowlhouse, tunnel house, Downlands water tank and pressure pump, inground rain water tank, effluent system, driveway and landscaping.

The farmland portion comprises an area of 3.7780 hectares which has some subdivision potential, and includes farm fencing, yard area, implement shed, hay shed, woolshed, granary, sheep yards and cattle yards.

[36] As to the current value of the home block the parties accept Mr Binnie’s assessment:

- (a) If all of the home block is regarded as the family home, \$590,000; and
- (b) Homestead value, \$395,000.

[37] At the conclusion of the evidence I enquired of counsel whether Mr Binnie should be asked to reassess the homestead value based on Mr Fay’s evidence about a temporary electric fence which was run across the paddock to the west of the area identified by Mr Binnie as the homestead. This is more clearly seen in exhibit two. Mr Fay said that the electric fence created a fence inside which his daughter’s thirty something year old horse grazed. Given it was arguable that the additional area of land might be regarded as part of the homestead it seemed appropriate to invite submissions as to whether additional evidence was required. Neither party required a further assessment of the homestead, being content that if the homestead provisions apply then its value is \$395,000.

[38] Ms Vann claims the family home comprises the entire home block, whereas Mr Fay submits that the homestead provisions apply.

Legal Principles

[39] The family home is defined in the Act as:³

family home—

- (a) means the dwellinghouse that either or both of the ... partners use habitually or from time to time as the only or principal family residence, together with any land, buildings, or improvements appurtenant to that dwellinghouse and used wholly or principally for the purposes of the household; and
- (b) includes a joint family home

[40] Homestead is also defined:⁴

homestead—

- (a) means a family home where the dwellinghouse that comprises the family residence is situated on an unsubdivided part of land that is not used wholly or principally for the purposes of the household; ...

[41] There are certain exclusions to that definition, none of which apply in this case.

[42] Whether a property is the family home or a homestead is a question of fact, dependant on whether the land appurtenant to the family residence was used wholly or principally for the purposes of the household.

[43] Area alone does not determine the issue. In *Hight v Hight*⁵ the High Court found that a three hectare block was principally used for the purposes of the household, resulting in the land being classified as the “family home”. Justice Elias (as she then was) said:

... Where the lifestyle of the family is such that the land is predominantly used for the purposes of the household, rather than as an economic unit, then I consider that the whole property may well be a matrimonial home. That

³ Section 2 of the Act

⁴ Section 2 of the Act

⁵ *Hight v Hight* (1996) 15 FRNZ 129

would be the case, for example, where there are extensive gardens and recreational uses of the land. Such uses might include tennis courts or paddocks for the grazing of animals kept for recreational or hobby purposes by members of the family.

[44] In *Clark v Clark*⁶ 56 hectares surrounded the family home. No economic activity had occurred on the land for some years. Rejecting a submission that a lack of farming and the planting of trees throughout the property (which had an amenity purpose) should result in the entire block being viewed as used wholly or principally for the purposes of the household, Asher J stated at para [84]:

In relation to H Road there has been no economic activity on the balance of the approximately 56 hectares that notionally surrounds the home. But this does not mean that by default the surrounding land can be regarded as part of the homestead. It is necessary in accordance with the definition of “family home” to show that the land is used wholly or principally for the purposes of the household. The phrase “purposes of the household” is not defined in the Act, but it is clear that it refers to the family household. The surrounding land has to be used principally for domestic family purposes, as distinct from economic purposes. Those family purposes could extend to a large area of land beyond the usual one-fifth or quarter acre block if there were for instance extensive gardens, or paddocks used for family animals such as a pet horse. However, where the land lies ignored or barely maintained as at H Road, it is not being used principally for family purposes. It is being used for no purpose at all. There is no default position which converts no use to use for purposes of the household. Thus, the bulk of the land which was farmland and is now unused cannot be part of the homestead.

[45] Consequently, the family home was limited to the dwelling and curtilage; the balance land remaining separate property.

Background

[46] The home block formed part of a modest sized farm on which cropping and mixed-cropping/dry stock farming was carried on by Mr Fay and his wife for several decades. At some point cropping ceased and the farm ran dry stock although I accept Mr Fay’s evidence that for a period of time (before this relationship) the paddock was used to cultivate crops.

⁶ *Clark v Clark* [2012] NZHC 3159

[47] It is not clear from the evidence when fences delineating the home block from the balance of the farm were constructed but it appears this occurred well before this relationship commenced.

[48] After Mr and Mrs Fay separated, Mr Fay sold one half of the farm to his brother (2006/2007), retaining the balance of the farm including the home block. The home block was contiguous to the balance of the farm.

[49] After settlement with Mrs Fay, Mr Fay moved back into the farm house, reduced stock numbers from about 1500 to 900 and continued farming. He later sold the stock and thereafter leased the farm (but not the home block) for grazing. This was a continuous activity, except for a period when a particularly dry winter and spring meant no feed was available for stock to graze on. Grazing continued until December 2011 when the balance of the farm (except the home block) was sold.

[50] The evidence satisfies me that during the relevant period (October 2008 to separation) the paddock on the home block:

- (a) Was principally left unattended. No garden or other recreational development occurred. The parties did undertake a significant garden development during their relationship but that was within the curtilage area referred to by Mr Binnie.
- (b) When the grass grew too high Mr Fay allowed stock grazing on his farm land access to this paddock, at no charge to the owner of that stock.
- (c) On one occasion he allowed baleage to be taken from the paddock, again at no cost, but in return received baleage which was used for his daughter's horse which grazed on the property.
- (d) From time to time a portable electric fence was run across the paddock near the home (as marked by Mr Fay on the aerial

photograph produced as exhibit two). On the house side of that fence his daughter's horse grazed.

[51] Ms Vann gave evidence that her children (Edgar and Rachyl) had pet lambs and cows. I granted Ms Vann leave at the conclusion of the evidence, but prior to submissions, to give further evidence about her children's pets and this paddock. She produced three photographs:

- (a) Photograph one depicts Edgar and what apparently is a young cow, his pet. On further questioning Ms Vann acknowledged that at the time the photograph was taken she was living in the cottage (therefore the photograph was taken some time between 2002 and early 2005) and the cow was on land surrounding the cottage, not on the home block.
- (b) Photograph two depicts a pony (Mr Fay's daughter's) and a cow which Ms Vann said was Edgar's pet. It is accepted that the animals are shown standing in the paddock.
- (c) Photograph three is of two cows, one of which Ms Vann said was Edgar's pet and the second cow (white in colour) was, she said, Rachyl's pet, having been acquired from Mr Fay's uncle who farmed nearby. It is accepted that the photograph shows the cows standing in the paddock.

[52] In relation to photographs two and three, Ms Vann was unable to say who took them (most likely it was her daughter, Rachyl), when they were taken, where they were taken from (especially photograph two) and the surrounding context. She "guessed" that photograph three was taken towards the western most end of the paddock, that is the end furthest from the farm house.

[53] These photographs supported, so she claimed, her evidence that the paddock was used during the relationship for the grazing of pets – the horse belonging to Mr

Fay's daughter, the cows belonging to Edgar and Rachyl, and a lamb or two, also the children's pets.

[54] I am satisfied that prior to the relationship (when Ms Vann and the children were living in the cottage) Edgar had a pet cow and possibly a lamb or two. Photograph one provides some independent confirmation of this. The evidence indicates his pets were kept on land surrounding the cottage and not in the paddock.

[55] When Ms Vann and the children moved from the cottage in early 2005 the pets remained on Mr Fay's farm.

[56] At the time Ms Vann and the children moved into the farm house (October 2008) the evidence establishes that the horse (Mr Fay's daughter's), and Edgar's cow were at the property.

[57] The cows and lambs were initially regarded as the children's pets but I accept Mr Fay's evidence that the children's interest in them waned relatively quickly (he estimated within a month) and ultimately the sheep were sent to slaughter. (Mr Fay believed this occurred prior to October 2008, Ms Vann believed it occurred around the time Mr Fay sold all his stock). Edgar's cow was also slaughtered, the evidence being unclear as to when this happened. Rachyl cow was acquired around 2009/2010 so Ms Vann believed – it did not stay on the farm long, being sold because it was "too wild". The horse remained on home block until after May 2012 and at one point Mr Fay permitted a relative to "run" a cow on the paddock at no cost.

[58] After considering all of the evidence on this issue I have come to the view that the evidence falls well short of establishing that the principal use of the paddock was for the purposes of the household. It may well be that from time to time the pets grazed on the land, but I accept Mr Fay's evidence that such use was occasional. During the relationship the paddock was largely ignored but maintained by allowing stock grazing on other parts of the farm to eat it down and on one occasion by allowing baleage to be taken off it. In reality the paddock was not used for any purpose. Allowing farm pets occasional access to the paddock does not alter the

position. It cannot be said that the paddock was used principally for family purposes.

[59] It follows that the homestead provisions of the Act apply. The family home comprises, in this case, the dwelling and curtilage as identified by Mr Binnie.

[60] The agreed value of the homestead is \$395,000. The balance of the home block remains Mr Fay's separate property.

Issue Two: Are the motor vehicles relationship property?

Background

[61] Mr Fay learnt to drive when he was 14 years of age. Since then he has had an interest in motor vehicles. In the 1950s and 1960s he expressed that interest by "buying, doing up and selling" Land Rover motor vehicles. He later developed an interest in Rover cars and purchased various models. By the early 2000s his interest had moved to Jaguar motor cars. In 2002 he purchased a 1995 Jaguar XJR.

[62] After separating from his wife, Mr Fay purchased another Jaguar, an XK8.

[63] As at October 2008 he owned the following motor vehicles:

- (a) 1992 Land Rover, with an agreed value of \$2000.
- (b) 1995 Jaguar XJR, with an agreed value of \$8500.
- (c) 1997 Jaguar XK8 convertible, with an agreed value of \$18,000.
- (d) 1986 Rover Cabriolet, with an agreed value of \$3000.
- (e) 1985 Rover Vanden Plas; no value was identified for this vehicle.
- (f) 1989 Land Rover 4x4; no value was identified for this vehicle.

(g) 2004 Kawasaki motorcycle, with an agreed value of \$6000.

[64] It is accepted that the following cars owned by Mr Fay as at October 2008 were used by the parties for family purposes and are therefore family chattels:

(a) 1992 Land Rover.

(b) 1995 Jaguar XJR.

(c) 1986 Rover Cabriolet.

[65] Ms Vann accepted that the other vehicles, except for the Jaguar XK8, were not used for family purposes and are Mr Fay's separate property. I address the classification of the XK8 shortly.

Ms Vann

[66] Ms Vann owned a Toyota motor car at October 2008. This was used as a family car until July 2011 when it was traded in on a Jaguar X-type. Ms Vann received a trade-in value of \$8500 for the Toyota and the balance (\$5500) was paid by Mr Fay. It is accepted the Jaguar X-type was used for family purposes.

[67] The parties agree that this Jaguar, retained by Ms Vann following separation, is a family chattel and is therefore relationship property. It has an agreed value of \$6500.

Jaguar XK8

[68] Ms Vann claims that this car is relationship property. Mr Fay disputes this. He claims it is his separate property.

[69] The car will be classified as relationship property if it is a "family chattel".

[70] The Act defines “family chattels”.⁷ In the case of a motor vehicle it must be owned by both or either of the parties and used wholly or principally for family purposes.

[71] “Family purposes” is not defined in the Act. The learned authors of *Fisher on Matrimonial and Relationship Property* state, “It seems probable that it is normally the substantial and permanent use to which the chattels were being put at the date of separation which matters.” And further, “In the case of motor vehicles ... it must be used “wholly or principally ... for family purposes. Use for family purposes generally seems to contemplate use by one ... de facto partner together with either the other ... de facto partner or children of the ... de facto relationship.”⁸

[72] The Act contemplates that a motor vehicle may be used for more than one purpose; for example in the business of one of the de facto partners and also for family purposes. However, before a motor vehicle can be classified as a family chattel it must be wholly or substantially used for family purposes.

[73] Where two or more vehicles are involved in “a complementary fashion to provide a single overall service to the family, a composite approach seems justified.”⁹

Evidence

[74] In respect of the Jaguar XK8; Ms Vann claims that it was used “frequently” by the parties; and that the children rode in it.

[75] Ms Vann said that the car was purchased after Mr Fay and his wife separated but before this de facto relationship commenced. It was used to attend car events (she estimated two to three times per year), for visiting friends or going into town for nights out. She said the children rode in it occasionally because it had a good back seat fitted with seatbelts allowing the kids to “just squeeze in there.”

⁷ Section 2 of the Act

⁸ Robert Fisher (ed) *Fisher on Matrimonial and Relationship Property* (looseleaf ed, LexisNexis) at para [12.20]

⁹ Ibid

[76] Ms Vann said she drove the car about five or six times, on short trips, for example from Pleasant Point to the farm house.

[77] Mr Fay disputed much of Ms Vann's evidence about the use of this car. He claimed that the children never rode in it, but acknowledged the car was used about once a month by he and Ms Vann to attend car club meetings. He said he drove whichever vehicle was taken on car club runs and referred to placing registrations on hold for various periods, including for this car. He accepted that Ms Vann drove this car but not often.

Discussion

[78] It is accepted that four cars owned by them prior to the relationship were used for family purposes and are therefore family chattels.

[79] The XK8 was purchased by Mr Fay as a consequence of his interest in that marque and not for any family purpose. It is a collectible classic car and was purchased to form part of his car collection.

[80] Although no evidence was given as to precisely when various car registrations were placed "on hold", it is clear from Mr Fay's evidence that his policy was to rotate registration of his vehicles, particularly those which were not used regularly, including this vehicle.

[81] I accept the evidence that the XK8 was taken by Mr Fay, (Ms Vann accompanying him) to car club events from time to time. Mr Fay was a member of the Convertible Car Club and the Jaguar Club. It is unclear from the evidence whether both parties were members of these clubs. Ms Vann gave evidence she was but on closer examination conceded she did not know whether she actually held membership. Mr Fay could not recall. Plainly, he was a member and paid the annual subscriptions.

[82] I consider that the use of the XK8 to attend car club events cannot be described as a use for family purposes. If I am wrong in that and such use is for family purposes, it cannot be said that use for this purpose was more than occasional.

[83] Ms Vann's case was that the parties used this car frequently but when pressed on this point her evidence was vague. At best she said it was used two to three times a year. There was no evidence given by her as to the use of the car at the time of separation or within a reasonable period prior to it. There was no evidence that the car was used for travel purposes.

[84] Ms Vann's evidence is that the children occasionally rode in the car. That is not accepted by Mr Fay but even if that was so, such use does not establish the car's principal use was for family purposes.

[85] Overall, I am not satisfied on the evidence that this car, the Jaguar XK8, was used wholly or principally for family purposes. It follows that the car is the separate property of Mr Fay.

Cars Purchased During Relationship

[86] During the relationship seven cars were purchased:

- (a) 2001 Jaguar X-type, with an agreed value of \$6500.
- (b) 1955 Ford Popular, with an agreed value of \$4000.
- (c) 1953 Jaguar XK120, with an agreed value of \$115,000.
- (d) 1989 Jaguar XJS, with an agreed value of \$16,000.
- (e) 1969 Ford Mustang, with an agreed value of \$50,000.
- (f) 1928 Chevrolet Tourer, with an agreed value of \$15,000.
- (g) 1928 Chevrolet Pickup, with an agreed value of \$9000.

[87] Prior to the hearing the parties had agreed that of those the following are relationship property:

- (a) 2001 Jaguar X-type. This was purchased in July 2011 using Ms Vann's Toyota as a trade-in, Mr Fay paying the balance. The car was used for family purposes. It was retained by Ms Vann on separation.
- (b) 1955 Ford Popular. This was purchased from friends of Mr Fay. It was paid for by Ms Vann and registered in her name. Both agreed that it was a family vehicle. On separation it was delivered to her.

[88] The remaining cars are claimed to be relationship property by Ms Vann on the basis that they are either family chattels or as a consequence of their acquisition for the common use or benefit of the parties.¹⁰

Jaguar XK120; Jaguar XJS; Ford Mustang

[89] It was uncontested that these cars were purchased by Mr Fay using his separate property. He received approximately \$750,000 from the sale of the balance of his farm in December 2011 to Mr Baxter. Some of this money was used for the purchase of cars for his car collection (his evidence being that this was better than receiving "three percent in the bank"), while other monies from the sale were applied towards a property development in Pleasant Point (accepted as separate property), payment of his separate debts, to effect improvements around the dwelling; and also for improvements to the sheds in which the cars were stored.

Family Chattels

[90] Ms Vann accepted that these cars were used occasionally and that their principal purpose was:

- (a) In respect of the Mustang, "just for car shows and things".

¹⁰ Section 8(1)(ee) of the Act

- (b) In respect of the Jaguar XK120, “just a collection piece”.
- (c) In respect of the Jaguar XJS, a car principally for car shows. Ms Vann accepted that it was not used generally for family purposes and was not used to transport the children because they could not fit in it.
- (d) In respect of the Jaguar XK120, it was transported to car shows and driven twice by Mr Fay shortly after he purchased it.

[91] In these circumstances I conclude that these vehicles were not used wholly or principally for family purposes. Any family use associated with them was occasional.

Common use or benefit

[92] The alternative ground relied on by Ms Vann is that these vehicles were acquired for the common use or benefit of the parties.

[93] Ms Vann relies on the common interest of the parties in classic cars and in the Jaguar and Convertible Car Clubs in particular.

[94] Mr Fay’s interest in cars dates to when he was 14 or 15 years of age; he has collected cars since the 1950s/1960s. In contrast, Ms Vann had no prior interest in cars of any particular type beyond “liking the look of them.”

[95] The evidence indicates that Mr Fay was a member of a car club prior to the relationship commencing and joined another car club some time after October 2008. The vehicles were driven (or trailered in the case of the Jaguar XK120) to car events. Except to the extent I refer to shortly in relation to the Chevrolets, Ms Vann was not involved in the upkeep or maintenance of any of the cars. For example, she understood they were serviced at Pleasant Point but I accept Mr Fay’s evidence that he undertook the general servicing and maintenance of the cars at home, taking them to Pleasant Point only for warrants of fitness. Major work was undertaken by duly qualified professionals at Mr Fay’s cost. He paid the running and upkeep costs of the cars.

[96] I find that Ms Vann's interest in collectible cars to be superficial. She enjoyed looking at them, riding in them and attending car club meetings but that was as far as her interest went. She did not know if she was a member of the two car clubs and had only the scantest knowledge of the cars themselves, for example she was unable to identify the Jaguars by their model designations.

[97] That Ms Vann had an interest in motor vehicles does not necessarily mean that the cars purchased were for common use or benefit. Plainly they were not for common use. Ms Vann accepted that she never drove some of the cars, and in respect of other cars she drove them on but a few occasions. Her evidence that the Ford Mustang and Jaguar XK120 were purchased as collection pieces and for "car shows and things" supports the view that the vehicles were not for common use, nor, in my view, for the common benefit of the parties. Mr Fay's evidence, which I accept, is that, flush with funds from the sale of the balance of his farm he decided to purchase motor vehicles (and property) as this was better than having the money earning minimal interest in the bank. That he had a fondness for classic cars no doubt made his decision to invest in motor vehicles that much easier. He acquired the cars not for the common benefit of the parties but by way of investment of his separate funds. I reject Ms Vann's evidence that Mr Fay told her that the Jaguar XK120 was for "our car collection, an investment for our future"; preferring the evidence of Mr Fay on this point.

[98] The fact that Ms Vann had limited, if any involvement, in the purchase of the cars and her response to their arrival at the home is inconsistent with her claim that their purchase was for common benefit. For example, the Jaguar XJS was purchased from Turners Car Auction in Christchurch. Mr Fay made two trips to Christchurch prior to purchase. Ms Vann did not accompany him; rather Mr Fay took a mechanic with him. At best Mr Fay told Ms Vann that he was going to Christchurch to look at a car. Asked about this matter she described the purchase as "... just another one that he brought home" because "he liked the look of it and it was really nice to drive". In relation to the Jaguar XK120, this was Mr Fay's "dream car"; Ms Vann was not involved in the purchase in any way and expressed surprise and shock when it arrived.

[99] I am satisfied, having regard to all of the evidence, that these cars were not acquired for the common use or benefit of the parties; rather they were purchased as an investment by Mr Fay utilising his separate property.

[100] It follows that the Ford Mustang, Jaguar XJS and Jaguar XK120 are Mr Fay separate property.

Chevrolet Tourer and Chevrolet Pickup

[101] The circumstances surrounding the purchase of these vehicles demands separate consideration. Ms Vann does not allege that they were used for family purposes and are therefore family chattels; rather she asserts that they were acquired for the common use or benefit of the parties.

[102] These vehicles are different in nature from the Jaguars and Ford Mustang purchased by Mr Fay. The Chevrolets are vintage vehicles dating back to the early years of automobiles. Unlike the Jaguars and Mustang, the Chevrolets are not suitable for general day-to-day use.

[103] The vehicles were owned by a Mr Toller who died in tragic circumstances. Sometime after his death, the date being unclear but on the evidence during 2012, his widow Toller, who Mr Fay had known for most of his life, telephoned to enquire whether he would be interested in acquiring the vehicles.

[104] Ms Vann joined Mr Fay when they went to Mrs Toller's home to view the cars.

[105] Ms Vann said she was immediately taken by the pickup which "looked like the one the Beverley Hillbillies drove in". She said that Mr Fay was diffident about buying it, he being interested in the other car, the Chevrolet Tourer. At this point she said she would buy the pickup using funds in her bank account. Ms Vann asserted that Mr Fay said both vehicles would be bought; he then managed to negotiate the price down because two cars were being purchased and told Ms Vann to "hold on to (your) money". He paid for both vehicles. Ms Vann alleged that he told her that the Chevrolet pickup was "hers" and the Chevrolet Tourer was "his".

[106] Mr Fay's evidence on this topic was vague. He accepted that both parties inspected the vehicles and both were purchased, he paying the purchase price after successfully negotiating a reduction in price.

[107] As to the specifics of what passed between the parties, Mr Fay said he could not recall. He was unable to remember whether Ms Vann's evidence that he decided to buy the Tourer and she the pickup was correct. To his own counsel on that topic he said, "Well that – that's must of what happened because I don't remember, Sir." Furthermore, he could not recall a conversation with Ms Vann along the lines that the pickup was hers.

[108] After purchase both vehicles were driven back to [address deleted], Mr Fay driving the Tourer; the pickup by the vendor. Ms Vann drove back in the car she and Mr Fay had arrived in.

[109] The pickup was in a dilapidated condition requiring considerable restoration work. The evidence satisfies me that Ms Vann worked on it in connection with the removal of the flat deck on the vehicle. A new deck was installed by professionals at Mr Fay's cost. The vehicle remains in a shed at [address deleted] and has not been driven since purchase.

[110] The Chevrolet Tourer also remains at [address deleted]. It is in running condition and Mr Fay has used it from time to time for short trips.

[111] Although Ms Vann did not pay for the pickup nor for the renovation work, the circumstances of the purchase satisfies me that both Chevrolets were intended to be for the benefit of the parties. Ms Vann had decided to purchase the pickup in her own right. She had the ability to do so. She did not pay for it due to a decision made by Mr Fay. That does not mean it was not for common benefit. I accept her evidence that he told her that the pickup was "hers" and the Tourer "his".

[112] In relation to the Tourer, I accept Ms Vann's evidence that she spent some hours working on the spoked wheels.

[113] Unlike the other cars purchased by Mr Fay during the relationship, both parties were involved in the purchase of the Chevrolets; Ms Vann was prepared to buy the pickup irrespective of what Mr Fay chose to do and the decision was made to buy both. Mr Fay's statement, not challenged, that he said the Tourer was his and the pickup Ms Vann's, supports Ms Vann's assertion. Significantly, and unlike the other cars purchased by Mr Fay, both parties worked on the Chevrolets.

[114] In these circumstances I find that the Chevrolet Tourer and Chevrolet pickup are relationship property.

Issue Three: Should relationship property be divided on an unequal basis?

[115] Mr Fay submits that exceptional circumstances exist in this case which make the equal sharing of relationship property repugnant to justice.¹¹

[116] He relies on the following in support of the submission that exceptional circumstances exist:

- (a) The unequal contributions of the parties at the commencement of the relationship.
- (b) The unequal financial contributions of the parties during the relationship.
- (c) The circumstances relating to the acquisition of the homestead comprising the major relationship property asset, representing a "lifetime's work" for Mr Fay.
- (d) That no contracting out agreement was entered into because of assurances from Ms Vann.
- (e) The length of the relationship, just over four years.

¹¹ Section 13 of the Act

- (f) The respective positions of the parties upon termination of the relationship.

[117] Ms Vann submits there is nothing extraordinary about the circumstances of this relationship and disputes that equal sharing of property would be repugnant to justice in this case.

Discussion

[118] At the commencement of the relationship Mr Fay was 59 and Ms Vann 37 years old. Both had been previously married and both had settled relationship property issues with their former spouses.

[119] Ms Vann had two primary school aged children. Mr Fay's five children were all adult and self-sufficient.

[120] Ms Vann brought into the relationship a motor vehicle which three years later was given a trade-in value of \$8500, personal chattels and furniture (although it appears some of those items, such as a piano, had been purchased by Mr Fay for her or her children in the preceding two years) and about \$12,000 in savings.

[121] Mr Fay provided the family home, some chattels (although I accept the evidence of Ms Vann that Mr Fay's former spouse had removed a significant quantity of furniture and chattels upon her vacating the farm house) and three motor vehicles which are agreed to be or have been classified as family chattels (1992 Land Rover, 1995 Jaguar XJR and 1986 Rover Cabriolet), having a combined value at separation of \$13,500. Mr Fay deposed that he was in debt at the date the relationship commenced but no bank statements were provided to assist the Court in this regard.

[122] Clearly Mr Fay provided the overwhelming majority of assets (by value) at the commencement of the relationship. That said, Ms Vann contributed all that she had available to her.

[123] During the relationship neither party worked. Mr Fay ceased farming due to health reasons and leased his farm land for grazing purposes, providing an income which was just sufficient to meet the costs of running the household. He assisted other farmers in the area from time to time but on an unpaid basis. Ms Vann received child support from the father of her children of somewhere between \$400 and \$600 per month. She kept those funds separate, banked into her own account, but made them available to meet household expenses when Mr Fay's income from grazing was insufficient for that purpose, receiving reimbursement except on one occasion.

[124] There is a conflict in the evidence as to why Ms Vann did not work. Her evidence was that Mr Fay said he did not want her to do so; he did not remember saying so but accepted there was never any discussion that Ms Vann should look for employment. She was, to use his words, the "perfect partner" who I am satisfied attended to running the household. I find her (non) financial contribution during the relationship to be at least equal to that of Mr Fay. She looked after the house, cooked meals and attended to general household chores. In addition, she looked after Mr Fay when his health failed, for example driving him when his eyesight deteriorated and on at least one occasion undertook manual work in the gardens because he had suffered a shoulder injury. She was actively involved in planting 700 native trees and developing a pond within the curtilage area of the homestead.

[125] Mr Fay was actively involved in the raising of Ms Vann's children. It is clear that he formed a close attachment to them, describing in his evidence how he loved them. He was actively involved in their schooling and other activities. Unfortunately however, his relationship with the children deteriorated to the point where in May 2012 Ms Vann decided that she and Mr Fay needed to live at separate addresses.

[126] There was no intermingling of property during the relationship. Mr Fay sold the balance of his farm and received about \$750,000 net. He kept those monies separate. Ms Vann kept her child support income separate. The only purchases of note which occurred during the relationship were of motor vehicles. The two Chevrolet motor vehicles were purchased for common use or benefit but were paid

for by Mr Fay from his separate funds. The Ford Popular, purchased during the relationship, was paid for by Ms Vann. Both contributed to the purchase of the Jaguar X-type.

[127] Mr Fay paid for household expenses; power, food and the running costs of all motor vehicles. There was some dispute as to whether the cost of groceries was shared (Ms Vann's position) or not (Mr Fay's position). I am satisfied that from time to time Ms Vann paid for groceries and other costs such as cafes and lunches, but predominantly the cost of living was met by Mr Fay from his separate funds.

[128] Mr Fay asserts that he did not enter into a contracting out agreement with Ms Vann because of assurances she gave him that she would "not do what your wife did to you". Ms Vann disputed there was any discussion about a contracting out agreement and although she accepted making a comment along the lines alleged, she said it related to Mr Fay's first wife who effectively stripped the house of furniture and chattels.

[129] Mr Fay's evidence as to discussions concerning a property agreement was vague. I record in passing that his evidence generally was peppered with inconsistencies, inaccuracies and general vagueness, traits Ms Vann's evidence also suffered from.

[130] In relation to this issue, Mr Fay said at one point that discussions concerning a property agreement arose at a time when he still owned half of the original farm and occurred in the context of him not wanting to go through that again and sell the balance of the farm. Later, Mr Fay said that Ms Vann's comments "came out of the blue" and he could not recall any context surrounding the alleged discussions.

[131] The evidence does not satisfy me, even on balance, that Ms Vann said she would not make a claim against Mr Fay in the event the parties separated, nor that there was a conversation (or conversations) concerning the preparation of a contracting out agreement resulting in Mr Fay not pursuing the issue because of assurances from Ms Vann.

[132] In respect of the submission that the circumstances relating to the acquisition of the home block, including homestead, involved a “lifetime’s work” by Mr Fay, reliance is placed on the decision of *Sydney v Sydney*¹² where at para [101] His Honour Judge Coyle, when dealing with an art collection worth \$350,000 (which made up most of what the Court described as the disproportionate amount of property brought into the relationship by the husband) said the collection was:

... not an asset purchased over time, but rather than an asset by and large created by Mr Sydney, both through his own endeavours, and through his relationship with other artists. It is the combination of this fact, coupled with the disproportionate contributions made by Mr Sydney to the assets of the relationship which in my view lead to a finding that there are extraordinary circumstances which make the equal sharing repugnant to justice.

[133] Mr Fay relies on that passage when submitting that the homestead and home block are the remnants of a lifetime’s work, a farm property which Mr Fay worked on and paid off over decades. An analogy was drawn with Mr Sydney, who had created the asset as a consequence of his labours.

[134] If His Honour in *Sydney v Sydney* intended to differentiate between an asset physically created by a party and an asset purchased or acquired over time, giving greater weight to the former, then it is a distinction I do not concur with. I am unable to conceive why greater weight should be given to an asset created physically by an individual over one acquired as a consequence of that person’s intellectual success. It is the existence of the asset and its significance when considering the contributions of the parties that is important, not whether the asset was acquired as a result of manual effort, intellectual effort or a combination of the two. Here, over a period of 40 years Mr Fay had acquired a significant asset which he brought into the relationship.

[135] The length of relationship in this case is just over four years, beyond the statutory definition of a relationship of “short duration” but one towards the shorter end of the spectrum. It was by all accounts a happy relationship until around May 2012 but even then the decision by Ms Vann to find alternative accommodation was not intended to, nor did it, signal the end of the personal relationship; rather it was to

¹² *Sydney v Sydney* [2012] NZFC 2685

give her children space from Mr Fay. He accepted the relationship as ongoing, leading to his unsuccessful proposal of marriage in late 2012.

[136] At the conclusion of the relationship Ms Vann retained two motor vehicles with a combined value of \$10,500, bank accounts of around \$13,000 and furniture and chattels. She is entitled to receive a share of the homestead value of \$395,000 and in the two Chevrolet cars which have a combined value of \$24,000.

[137] Mr Fay retained motor vehicles (those classified as family chattels) to a value of \$13,500, a share in the homestead, and the two Chevrolet motor vehicles.

[138] The property agreed or determined to be relationship property in this judgment is valued at \$443,000. To those assets Ms Vann's contribution was \$12,500 (the trade-in value of the Toyota car and the cost of the Ford Popular). Overwhelmingly, the property which now stands to be divided was provided by Mr Fay. The homestead comprises just under 90 percent of the value of relationship property I am dealing with and Mr Fay's overall contribution to these assets is 97 percent.

[139] While any one of the factors relied on by Mr Fay cannot be described as extraordinary, it is their cumulative effect which leads me to conclude that extraordinary circumstances exist in this case, arising by reason of the disparity in contributions, particularly a gross financial disparity, in combination with the length of the relationship.

[140] Bearing in mind the purposes and principles of the Act,¹³ equal sharing of relationship property in the extraordinary circumstances I have found exists here would be repugnant to justice.

[141] This case bears a striking similarity to *Venter v Trenberth*,¹⁴ a case brought to my attention by research counsel after the conclusion of submissions. There, the relationship, a second for both, was one of four years duration. Relationship property involved the family home and chattels valued at between

¹³ Sections 1M and 1N of the Act

¹⁴ *Venter v Trenberth* [2015] NZHC 545

\$600,000-\$650,000. In upholding the Family Court decision to apply s 13, Woolford J noted that there were no children of the relatively brief relationship; that Ms Venter had not been economically disadvantaged by the relationship and in fact received an advantage in that she lived rent or mortgage free for the period of the relationship; and that her earning ability remained unaffected because she did not give up work or a career for the relationship. In that case, as here, one party had provided the family home, paid all the outgoings on the home and other essential outgoings such as power, telephone and alike; and the parties had acquired no relationship property together, keeping separate accounts but sharing some outgoings.

Conclusion

[142] I conclude that Mr Fay has shown extraordinary circumstances exist that make equal sharing of property repugnant to justice.

Share

[143] I now turn to an assessment of the contributions of Ms Vann and Mr Fay:¹⁵

(a) *Care of family members:*

Mr Fay's five children were adult and independent by the time the parties lived together as a couple. Ms Vann's children were school age and lived in the household. Both children had issues, Edgar was diagnosed with [name of syndrome deleted] and Rachyl was thought to have characteristics of [name of syndrome deleted]. While Ms Vann was primarily responsible for them (including meeting their educational costs) it is clear from the evidence that Mr Fay was very fond of the children and an active and caring stepfather. He spent considerable time with them and became involved in their interests and welfare generally, actively participating in their lives and meeting a number of costs associated with their activities.

¹⁵ Section 18 of the Act

(b) *Management of the household and performance of household duties:*

For much of the time the parties lived together Mr Fay was retired. He sold the farm due to failing health. The evidence establishes that he left the running of the household to Ms Vann who, I find, made a greater contribution to day-to-day tasks than Mr Fay. He went so far as to describe her as 'perfect' in the performance of household duties. She undertook a number of renovations around the home, both inside and out and was actively involved in the creation of a substantial native garden within the curtilage area.

(c) *Provision of money including earning income for the purposes of the relationship:*

Neither party had employment during the relationship. Mr Fay ceased his farming activities after the parties commenced living together. He then received income from grazing his farm land to others. It was his income (separate property) which met most of the household expenditure such as power, telephone, fuel and groceries. Ms Vann's income (child support which she banked into her own account) was available for her own use and to meet the costs of the children but I accept her evidence that she also contributed towards the cost of groceries and from time to time other expenditure, lunches, cafes and the like. Predominantly however, Mr Fay met the costs of running the household.

(d) *Acquisition of creation of relationship property:*

Most of the relationship property involved in this case existed prior to the parties living together as a couple. The home was provided by Mr Fay and became relationship property by operation of law; similarly in respect of several motor vehicles owned by him prior to the de facto relationship commencing. I have found that the two Chevrolet motor vehicles acquired during the relationship are relationship

property. Payment for them came from Mr Fay. The Ford Popular was purchased by Ms Vann using her separate funds and she traded in her car to assist in buying the Jaguar X-type.

- (e) *Payment of money to maintain or increase the value of relationship property or separate property of the other:*

There was no evidence Ms Vann provided money to maintain the home nor the motor vehicles which are agreed (or have been found) to be relationship property. She made a relatively minor contribution towards household costs by meeting the cost of groceries from time to time and general entertainment expenses of the parties.

- (f) *Work or services in respect of relationship or separate property:*

Ms Vann undertook painting and other renovation work around the home and was involved in the creation of an extensive native garden. For a period when Mr Fay actively farmed the property she also assisted as a general farm hand just as she had prior to the relationship commencing when she rented a cottage from Mr and Mrs Fay. She was not paid for the work during the relationship. Mr Fay undertook the servicing on the family motor cars.

- (g) *Foregoing of a higher standard of living:*

This has no application in this case. Ms Vann was in receipt of a benefit at the time she and Mr Fay commenced living together. Shortly before separation she took work in a local supermarket. During the intervening period she did not work beyond providing massages on an occasional basis from a room in the farm house converted for this purpose. She and the children lived rent free during the term of this relationship.

- (h) *Providing assistance or support to the other spouse:*

For much of this relationship the parties were happy. Even when Mr Fay heard rumours (from his son) that Ms Vann was involved in a sexual relationship with his nephew he kept that to himself and generally the nature of the relationship remained unaltered. They provided mutual emotional support. Mr Fay had failing eyesight and on at least one occasion an injured shoulder which prevented him from undertaking manual work. During periods of his ill health Ms Vann drove him about and undertook the work he was not capable of.

[144] There is no presumption¹⁶ that a contribution of a monetary nature is of greater value than a non-monetary contribution. I take that into account.

[145] Standing back and assessing the parties' contributions to this relatively brief relationship I conclude their relationship property should be divided on the basis of contributions which I assess as being a 65 percent contribution by Mr Fay and a 35 percent contribution by Ms Vann.

Result

[146] In terms of the issues I have been required to determine:

- (a) The homestead principle applies. The dimensions and value of the homestead are set out in Mr Binnie's valuation of 21 September 2015. The homestead has an agreed value of \$395,000.
- (b) The two 1928 Chevrolet vehicles are relationship property by reason of them being purchased for the common use or benefit of the parties. The Chevrolet Tourer has an agreed value of \$15,000 and the Chevrolet pickup, \$8000.
- (c) Other vehicles agreed either before or during the course of the hearing to be family chattels and therefore relationship property are:

¹⁶ Section 18(2) of the Act

- (i) 1992 Land Rover, agreed value \$2000.
 - (ii) 1995 Jaguar XJR, agreed value \$8500.
 - (iii) 1986 Rover Cabriolet, agreed value \$3000.
 - (iv) 1955 Ford Popular, agreed value \$4000.
 - (v) 2001 Jaguar X-type, agreed value \$6500.
- (d) On the basis that extraordinary circumstances making an equal sharing of property repugnant to justice exist, the shares of the parties in their relationship property are:
- (i) Mr Fay – 65 percent.
 - (ii) Ms Vann – 35 percent.

Orders

[147] I make the following orders:

- (a) An order vesting ownership of the 2001 Jaguar X-type motor car bearing registration number [registration number deleted] in Ms Vann.
- (b) An order vesting ownership of the following motor vehicles (classified as relationship property) in Mr Fay:
 - (i) 1992 Landrover bearing registration number [registration number deleted].
 - (ii) 1995 Jaguar XJR bearing registration number [registration number deleted].

- (iii) 1996 Rover Cabriolet bearing registration number [registration number deleted].
- (c) An order that each party retain as their separate property the property currently in their power, possession or control.
- (d) An order that Ms Vann's share in all relationship property is assessed at 35 percent and Mr Fay's share at 65 percent.
- (e) An order that Mr Fay pay to Ms Vann, within 90 days of this judgment, a sum equal to 35 percent of all relationship property of the parties with due allowance for relationship property retained by her.
- (f) An order vesting ownership of the Ford Popular motor vehicle, registration number [registration number deleted], in Ms Vann. I decline to make an order vesting this vehicle in favour of Mr Fay as he submits for. While it is correct that he had a personal connection with the former owner of the vehicle, the car was paid for by Ms Vann, registered in her name and delivered to her following the parties moving into separate residences in May 2012. She wishes to retain the vehicle. Mr Fay's connection with the car and its former owner does not persuade me to override Ms Vann's views.

Costs

[148] Mr Fay has generally succeeded in the arguments advanced in this hearing, specifically that the homestead provisions of the Act apply, that most of the vehicles purchased during the relationship remain his separate property and that an unequal division of relationship property is justified in this case.

[149] If costs are not agreed as between the parties submissions are to be filed within 28 days of this judgment.

M B T Turner
Family Court Judge

Signed on: _____ at _____ am/pm