

**NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT  
AT MASTERTON**

**FAM-2015-035-000044  
[2016] NZFC 1892**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	CASSIDY WOOD Applicant
AND	ANDRE BRANT Respondent

Hearing: 9 March 2016

Appearances: V Pearson for the Applicant  
Respondent appears in Person supported by L Brant

Judgment: 9 March 2016

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**ORAL JUDGMENT OF JUDGE P R GRACE**

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[1] This has been a hearing in respect of a relationship property dispute involving Ms Wood and Mr Brant.

[2] The parties have been in a relationship since 2002, with that relationship coming to an end in January 2014. So, on the face of it, the parties were involved in a relationship for approximately 11 years. There are three dependent children from that relationship and, as I understand the evidence, Ms Wood has a child from an earlier relationship who resided with the parties.

[3] At this hearing today Mr Brant represents himself. He is accompanied by his father as a support person. Until today he has had a lawyer acting for him on the record, but that lawyer has not represented him at this hearing.

[4] There does not appear to be a great dispute between the parties as to what would constitute relationship property. There is a family home at [address deleted] in Masterton which has a registered valuation as at 7 August 2015 of \$214,000. There are family chattels which have not been valued but, as I understand Ms Wood's position, the chattels can in effect be owned by the party who currently has them in their possession. There was a 2007 Mitsubishi Grandis which Mr Brant retained; the only evidence before the Court is an estimated value of \$6000. There is a 1993 Mazda ute valued at \$1500 which was retained by the applicant. There was a boat retained by Mr Brant at \$2000, and Ms Wood had a KiwiSaver account at \$1722. So all up, total assets appear to be around \$225,222.

[5] There are agreed debts. Mr Brant has not placed these before the Court in a correct form, but Ms Wood has indicated that for the purposes of this hearing, she will accept them: the respondent's IRD tax debt as at the date of separation of \$6300; the respondent's IRD GST debt at the date of separation of about \$2300; an ACC debt at the date of separation of around \$4000; a Baycorp debt at the date of separation of around \$500. There were rates arrears owing at the date of separation in the sum of \$1700 in round figures.

[6] There are also two loans owing to Westpac secured against the property. The exact amount of those debts is unclear. It would appear that the parties have each

received notification from the bank that the mortgage is in arrears. Mr Brant says that that will be sorted out with some tax credit which he is due shortly, but no evidence has been placed before me as to the genuineness of that proposition. The debt to the bank appears to be around \$166,000.

[7] Since separation, Mr Brant has remained in occupation of the family home. He has from time to time fallen behind with the rates and/or the mortgage. There was an issue raised in early January 2015 of arrears owing, and that was sorted out by what appears to be a loan from his father. There is evidence of another letter being recently received from the bank indicating the current arrears. That letter has not been placed in evidence, but it appears to be common ground that there are current arrears owing.

[8] It is apparent from the evidence that Mr Brant feels aggrieved by the provisions of the Property (Relationships) Act 1976. He claims to have had equity of some \$30,000 as at the time the parties commenced their relationship. He appears to take the view that he was the primary income earner and that, from his perspective, Ms Wood did not contribute in the way that he had expected her to do so. He therefore feels he has carried this family, and one gains the impression that he is somewhat reluctant to resolve relationship property issues with Ms Wood. He is also aggrieved by the fact that he sees Ms Wood as not being cooperative with him in making payments towards the outstanding debt to IRD.

[9] At the present time, the situation is at an impasse and has been at an impasse for now in excess of two years. The relationship property needs to be resolved.

[10] The matter was stood down because Mr Brant indicated he was prepared to make an offer to resolve matters. I am now informed that that offer has not come to anything, so I am now giving a decision because the matter does need to be resolved.

[11] The principles of the Property (Relationships) Act indicate that relationship property is to be divided equally between the parties. There was no contracting out agreement between the parties, so they are bound by the provisions and principles of the Act itself.

[12] Mr Brant takes the view that he has the responsibility for the children, but in reality the parties share the care of the children, so that they are spending 50 percent of their time with their father in the family home and 50 percent of the time with their mother, who is in rented accommodation. So, in my view, there is no legal reason as to why the relationship home should not now be sold and the proceeds divided between the parties. It is unfortunate that the situation has come to this, because I am conscious of the fact that the parties will now incur quite considerable estate agents' and legal costs involved in the sale of the property, and that will come out of their joint nett equity.

[13] In the circumstances the matter is to be dealt with in this way:

- (a) There will be an order that the relationship home at [address deleted] in Masterton is to be sold.
- (b) There will be ancillary orders relating to that:
  - (i) The registrar of the Court at Masterton is to be appointed with the power to list the property with an estate agent for the purposes of that sale. That estate agent is to be Harcourts. The property is to be sold by way of public auction.
  - (ii) The registrar of the Court at Masterton is authorised to sign any necessary documentation required to list the property and to complete the sale of the property. The registrar is authorised to sign any such documents on behalf of the respondent, Mr Brant, and that includes any transfer document which may be required.
  - (iii) There will be an order granting the registrar sole occupation of [address deleted], Masterton, for the purposes of ensuring that agents can access the property and potential purchasers can access the property. If they are obstructed in that access, then the registrar would be authorised to enforce occupation by the

removal of Mr Brant from the property. That occupation order will take effect from 5.00 pm next Friday; that is, 18 March 2016.

- (c) The proceeds of sale will be applied as follows:
- (i) In payment of estate agents' commission, legal costs and any incidental costs incurred in respect of the sale
  - (ii) In repayment of the mortgage to Westpac
  - (iii) In repayment of any outstanding rates
  - (iv) In payment of any outstanding insurance.
  - (v) The nett proceeds are then to be divided between the parties. However, from Mr Brant's half share, there shall be deducted and paid to the applicant the sum of \$2389. That figure is derived by me taking into account the assets as set out in the figures provided by Ms Pearson in her memorandum and making allowance for the assets that Ms Wood will retain; that is, her KiwiSaver and her vehicle. Making allowance for those two figures, the sum of \$2389 brings up the equal division of those assets.
  - (vi) From the proceeds of sale, because the debts that I have referred to are relationship debts, there will need to be repaid the arrears of rates that were owing at the date of separation, the IRD debt as at the date of separation, the respondent's GST debt as at the date of separation, the ACC debt at the date of separation, and the Baycorp debt as at the date of separation.
- (d) If any of the payments have been made by either party towards the reduction of those debts, then the party who has made those payments would be entitled to an appropriate credit.

- (e) There will be interest on the sum due to Ms Wood from the date of separation down to the date of payment at the rate of 4 percent.
- (f) The next issue which I deal with is the issue of costs. In my view, this matter was quite capable of being resolved before it got to this hearing, and the fact that it has got to this hearing has made the whole process far more expensive than it needed to be. Therefore, there will be an order for costs in favour of Ms Wood against Mr Brant, and the costs are to be fixed at the rate set out under 2B of the scale.
- (g) Any assets that are retained by Ms Wood at the present time will remain her sole and separate property, and any other assets retained by Mr Brant as at the date of this order will remain his sole and separate property.

[14] I will suspend this order for 48 hours. If the parties have not resolved the matter within 48 hours, the order kicks in.

**Addendum:**

[15] Since I gave my decision earlier on this morning, there has been further discussion between the parties. Mr Brant has now made an offer in writing to Ms Wood which she has accepted, subject to some conditions which Mr Brant has agreed to.

[16] The proposal now is that Mr Brant would pay Ms Wood a nett sum of \$15,000 in full and final settlement.

[17] That offer is subject to, firstly, Mr Brant instructing his lawyer to confirm this in writing by 5.00 pm on 10 March 2016. Secondly, it is also subject to Westpac agreeing to discharge Ms Wood from her personal covenants and liabilities in terms of the mortgage, so that she is not subjected to problems from the bank. And finally, the settlement must occur on or before 5.00 pm on 23 March 2016.

[18] On the basis that that offer has now been accepted, I will vary my original decision so that the stay that I put on for 48 hours will now extend till 5.00 pm on 23 March 2016, so that if settlement is not effected on 23 March 2016, then the terms of my decision kick in and the house will go to sale.

P R Grace  
Family Court Judge