

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE**

**<https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>**

**IN THE FAMILY COURT  
AT TAURANGA**

**I TE KŌTI WHĀNAU  
KI TAURANGA MOANA**

**FAM-2019-070-000343**

**FAM-2019-070-000369**

**[2020] NZFC 8075**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[ABBY STRONG] Applicant
AND	[ADAM GROSS] Respondent

Hearing: 15 September 2020

Appearances: J Nicols for the Applicant  
Respondent appears in Person (via telephone)

Judgment: 15 September 2020

---

**ORAL JUDGMENT OF JUDGE C L COOK**

---

[1] Today has been set down for a one-hour submission-only hearing to determine applications to finalise relationship property matters. There is also an application for spousal maintenance and there has been a previous application for an interim injunction to restrain assets.

[2] The position is today that the application for spousal maintenance which had been filed on behalf of Ms [Strong] is to be discontinued as is the application for the interim injunction to restrain assets. Accordingly, I discontinue those two applications.

[3] That leaves the application for relationship property orders which have been filed by Ms [Strong]. The position is that I made directions for the parties to file submissions. I have received submissions on behalf of Ms [Strong] and Mr [Gross] who is residing in [Europe] has appeared by telephone today and he has spoken orally in respect of his matters. Although he has addressed factual matters I am satisfied that those factual matters have been subject and are really a repeat of his previous affidavit evidence so it does not encompass any new matters.

[4] The position is by way of background for the parties in terms of these court proceedings are I previously made an order for an interim maintenance order in favour of Ms [Strong] on 27 May this year for an amount of \$5,811 and six monthly payments of \$223.50. By way of background the parties were married [in late] 1998. At the beginning of the relationship the parties were both working as [occupation deleted] in [Europe] and they relocated to New Zealand in 2002. During the relationship both parties studied, they both [job details deleted] and the respondent worked full-time in numerous roles. From 2007 onwards, the respondent worked as [occupation deleted] and the applicant continued her studies.

[5] The parties separated on 24 November 2018. At the time of separation the relationship property assets consisted of a [business enterprise] shares trading as [deleted], two vehicles, chattels, bank accounts and the respondent's Kiwisaver, there were also debts including a vehicle loan, credit card debt and student loan.

[6] In June 2019 the respondent changed his name and relocated to [Europe]. The applicant filed her Relationship Property Act applications and the application for the interim injunction on 27 June 2019 together with her application of financial means narrative affidavit of assets and liabilities which was dated 15 August 2019. The respondent has provided his evidence in reply predominantly in terms of a narrative affidavit.

[7] The applicant's position for today is that it was discovered during the course of these proceedings that the respondent had gambled extensively and had gambled relationship property funds away at a gambling website. There has now been provided disclosure of the bank accounts which show the transaction history and they have been provided to the court by consent in a bundle pursuant to s 9 of the Evidence Act 2006. The applicant's position is that the respondent's behaviour has amounted to misconduct pursuant to s 18A of the Property Relationships Act 1976, (the Act) and that the relevant section pursuant to this factual situation is s 18A(3) which states:

For conduct to be taken into account the conduct must have been gross and palpable and must have significantly affected the extent or value of the relationship property.

[8] Section 18C of the Act provides for compensation for dissipation of relationship property if after separation during the relevant period the relationship property has been materially diminished in value by the deliberate action or inaction of one spouse or partner and that the court may accordingly compensate the partner who has been disadvantaged by a payment of a sum of money.

[9] There has been a recent High Court decision of Cooke J<sup>1</sup> which is referred to in the applicant's submission and in my view does encapsulate the current position which assists the court in interpretation of this section and the decision has been provided to the court and is referred to in applicant's submissions and the relevant excerpt from His Honour Cooke J is that this section sets high thresholds that must be reached before misconduct is relevant to the division of relationship property. Under s 18A(3) not only must misconduct be gross and palpable but it must also significantly affect the extent or value of the relationship property and even then qualified misconduct is only permissibly taken into account when determining the relevant contributions of the parties when assessing whether one of the exceptions to equal division applies or where the court is exercising the specified powers pursuant to s 18A(2)(b). As indicated s 18A(3) has two discrete requirements, the need to establish gross and palpable misconduct and the need to show that that misconduct significantly affected the extent or value of the relationship property.

---

<sup>1</sup> *Hewson v Deans* [2020] NZHC 1465 at [7]-[16].

[10] The applicant has provided examples of two decisions which have addressed the issue of misconduct in reference to gambling addiction. The decision of her Honour Judge Johnson in the decision of *MTS v GRW*.<sup>2</sup> In that case her Honour found that the evidence did not establish the respondent's playing of pokies amounted to gross and palpable misconduct which significantly affected the value of relationship property and a decision of *Vaughan v Vaughan*<sup>3</sup> which is a decision of Judge Borrin and in that case he found that the husband had gambled throughout the marriage and his gambling had been kept hidden from the wife. In that case His Honour Judge Borrin held that whilst one must not lose sight of the fact that during the first nine years of marriage the husband alone maintained the family and that he did contribute through the remainder of the marriage the admitted facts disclose a history of dissipation of income. That misconduct in my view fell within s 18(3) and must be taken into account. It was in the language of the subsection gross and palpable and significantly affected the extent or value of the relationship property.

[11] In this case it is argued that the relationship property pool is modest and that the amount taken by the respondent is clearly quantifiable from the bank statements and that shows from the period of 1 November 2017 to 1 November 2018 being 12 months prior to separation the respondent a net loss of \$36,136.19 to the relationship property pool by gambling and post-separation the accounts showed from 24 December 2018 to 14 February 2019 the respondent caused a further net loss of \$7,179.67 to the relationship property pool by gambling and it is submitted due to the extent of the respondent's gambling and the deception by him during the relationship and post-separation that it amounts to gross and palpable misconduct and that is further highlighted in this case where the relationship property pool is so modest and in this case if the funds had not been dissipated it would have resulted in an additional \$43,315.86 available for division.

[12] The applicant's position is that as a result of the respondent's misconduct the value of the relationship property has been diminished by two thirds of its value and that the applicant in this case seeks an order to be made recognising that diminution of relationship property by way of really a reintroduction of those funds into the

---

<sup>2</sup> *MTS v GRW* [2012] NZFC 7209.

<sup>3</sup> *Vaughan v Vaughan* (1992) 9 FRNZ 339 (DC).

relationship property pool and is seeking an order that the Kiwisaver in Mr [Gross]'s name here in New Zealand be released to Ms [Strong] and that there be orders effectively that the parties' respective assets remain in their sole and separate property but there be an adjustment by the respondent to the applicant of \$14,802.92 pursuant to s 33(i) of the Act, s 33 being simply the section which allows the court to make the orders.

[13] In considering that position I now turn to Mr [Gross]'s submissions. Mr [Gross]'s submissions are really a reflection of the evidence that he had previously given and that was towards the end of the relationship he was working in Auckland but living in Tauranga, that he was travelling up to 500 kilometres per day and he was working extreme hours, that he was in a position where he was extremely stressed and his position was today that he has previously been diagnosed with depression and anxiety and I take it from that that what he is saying is that the online gambling was effectively a stress-release and as a continuation of his argument that he used in the spousal maintenance matter that he was solely responsible for being the breadwinner in the relationship and I take it from that that he submits that the additional funds which he took should not be reintroduced into the relationship property pool. He also adds that his financial situation is very difficult. He is living in [Europe]. He is residing with his mother and he has not been able to obtain any permanent employment.

[14] I do not have any current evidence from Mr [Gross] in terms of his financial position. In my view in taking into consideration the claim I take into consideration the following factors:

- (a) I accept that the relationship property pool was very modest.
- (b) I accept that the bank statements show a crystallised position where the funds removed for online gambling can be easily identified and are quantifiable.
- (c) I take into consideration that that spending was not by the consent of the applicant and was made without her knowledge or consent.

- (d) Whilst Mr [Gross] may have been the sole breadwinner over that period of time that in itself does not mean that the section has not been made out and that the parties' contribution to their marriage in different ways was so disparate that given my findings and the other aspects of the application that the application should not succeed on that basis.

[15] Accordingly, where I have reached is that it is one of these unusual situations where the high onus set out under the Act has been met, given the very clear evidence in my view can be distinguished from the previous decisions where there may have been a suggestion or there are circumstances such as alcoholism where the quantifiable loss in terms of the relationship is far more difficult to substantiate and that distinguishes those lines of decisions from this current case.

[16] I am also of the view that putting this money back into the pool would be appropriate. I take into consideration further that Mr [Gross] had effectively the control of the relationship property assets post-separation. Mr [Gross] argued in the Family Proceedings Act claim that he did support Ms [Strong] post-separation but in my view that would simply be accounted for by his obligations under the Family Proceedings Act which would distinguish that obligation from his obligations under the Property (Relationships) Act and again would not be a factor which I would take into consideration which would mean that this claim would be diminished or extinguished.

[17] As a result, therefore, I do find the application to be successful and I am going to make orders as sought and those orders are as per paragraphs 23(a)-(b) of the applicant's submissions dated 11 September 2020 and for avoidance of doubt I will read those orders that I am going to make as follows:

- (a) Firstly, there will be an order pursuant to s 31 of the Property (Relationships) Act 1976 directing the release of the balance of the [Kiwisaver account] in the name of [Otis Strong], account number [deleted] to [Abby Strong] to be paid to the trust account of CN Law.

- (b) An order pursuant to s 33 of the Property (Relationships) Act 1976 dividing the relationship property as follows:
- (i) All bank accounts in the separate name of each party are to be separate property of that party.
  - (ii) The family chattels in the possession of each party are to be the separate property of the person in possession.
  - (iii) Shares, current account and all other rights and obligations relating to [the business enterprise] is the separate property of the respondent.
  - (iv) The student loans and other debts in the name of each party are the separate property of that part.
  - (v) The Kiwisaver account in the name of the respondent is the separate property of the applicant.
  - (vi) The respondent is to make a payment of \$14,802.92 to the applicant pursuant to s 33(i) of the Act.

[18] Costs fall where they lie.

C L Cook  
Family Court Judge