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

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**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2016-092-000917
[2019] NZFC 2175**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	KARL HENRY GOSBEE Applicant
AND	VIVIENNE HELEN GOSBEE Respondent

Hearing:	5 and 6 December 2018
Appearances:	S McCabe for the Applicant S Mitchell for the Respondent
Judgment:	26 July 2019

RESERVED DECISION OF JUDGE A P GOODWIN

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[1] Karl Gosbee and Vivienne Gosbee are in dispute about the division of their relationship property. Some issues have been agreed. This decision is a determination of the outstanding issues so as to conclude the property division.

Background

[2] Karl Gosbee (applicant) and Vivienne Gosbee (respondent) met in the United Kingdom and married on 30 June 2001. The applicant is English, and the respondent is a New Zealander.

[3] The applicant and the respondent have two children. [The first child], born on [date deleted] 2002 (aged 16) and [the second child], born on [date deleted] 2004 (aged 14).

[4] The parties moved to New Zealand in May 2011. They separated on 15 January 2015.

[5] The proceedings commenced in August 2016.

Issues for determination

[6] The following issues require determination:

(a) The value of a Mercedes motor vehicle in the possession of the applicant (Mercedes valuation).

(b) A claim by the respondent for a s 15 lump sum payment (s 15 claim).

(c) The timing for pay-out of the applicant's superannuation fund (applicant's superannuation).

(d) A claim by the applicant for an adjustment for expenses paid by him for the children (children's expenses).

(e) Establishing whether there is any value in a United Kingdom superannuation fund held by the respondent, and if so, its quantum (respondent's superannuation).

Mercedes valuation

[7] The applicant provided a valuation from Car Valuations New Zealand Limited, dated 8 May 2017. This fixed a value for the motor vehicle at $12,000. In closing submissions, a compromise figure of $18,793 was canvassed, on the basis of a difference in value of items in each parties' possession.

[8] The respondent says that shortly before separation the applicant purchased the vehicle for $45,000. The valuation of 8 May 2017 was only formally tendered in evidence at the hearing, offering no opportunity of rebuttal. It is submitted on her behalf that if the car has lost the value indicated, then taking account of its collectable status, it should be valued at a date other than the hearing (s 2G(2) Property (Relationships) Act 1976 ("PRA") discretion). A valuation other than at hearing date is appropriate for assets that depreciate, particularly where one party has control and use of that item.

[9] Although the car was purchased shortly before separation it was valued by the applicant in his affidavit of assets and liabilities on 12 August 2016 at $35,000 in terms of value at separation and date of the affidavit. The original purchase price was $45,000. The primary rule for valuation (s 2G PRA) of valuation at hearing date may be departed from. The discretion is unfettered; however, the discretion must be exercised in a way that is consistent with the scheme and the purpose of the Act.

[10] A motor vehicle such as the one in dispute is a depreciating asset. It is common for such items to be dealt with by the way of adoption of a separation date value. The applicant has had the use of the vehicle throughout the period of separation. Given the purchase price and its timing so close to separation I adopt the applicant's valuation as at separation. Although this is not a formal valuation, the evidence of the applicant satisfies me that he had a clear view of its value having researched the market when buying the vehicle, which by his evidence was a two year search for the particular vehicle purchased.[1] The value is fixed at $35,000.

[1] Page 13, Notes of Evidence ("NOE").

Section 15 claim

[11] The respondent seeks a lump sum payment in the sum of $550,000.

[12] The applicant opposes any claim pursuant to s 15 of the PRA.

[13] In summary, the evidence establishes the following:

(a) By the time the parties met and married they were in established careers. The applicant was in his early 30s, he had obtained an accountancy qualification and had worked for approximately 10 years in accountancy and as a financial controller/finance officer. He was earning between £50,000 to £60,000 sterling. The respondent was in her mid-thirties, had qualified as an occupational therapist, and was working full time as an occupational therapist earning between £16,000 and £19,000 sterling.

(b) During the marriage the applicant continued to work full-time, with occasional, but short, gaps. His career advanced.

(c) The respondent worked for a short time before [the first child] was born in [month deleted] 2002. [The second child] was born in [month deleted] 2004. She only worked occasionally after the children's births.

(d) The parties moved to New Zealand in 2011. After a short period of re-adjustment and the applicant not been able to take up the role originally sought, the applicant obtained full-time work, which has continued. The respondent took up occupational therapy work from 2011 to 2013 when she ended her, by then, part-time occupational therapy employment.

(e) When the parties separated the applicant was in a full-time role with Corporate Services Directorate at Panuku Development earning approximately $250,000; the respondent was working as a caregiver on minimum wage.

[14] The applicant says that when the parties established their relationship he was already on a career arc, had been a qualified professional for 11 years, and that his roles as a financial officer and a corporate director were due to his intelligence and personal attributes. He says that he accepts that after the children were born the respondent took on more of the domestic duties, but it was not a much greater share. He says it was the respondent's choice to take limited employment during the marriage, and that she provided little support or encouragement in his employment. With regard to her ending the role she had as a part-time occupational therapist in 2013, that was her choice. At the time the children were of an age where home support for them was no longer required.

[15] The respondent says that she took on a traditional role once the children were born. She was a full-time caregiver, and although accepts the applicant made some contribution to domestic chores, she was by far the main provider for home chores and child care, which was an agreed division between her and the applicant. She says that she obtained a role as an occupational therapist upon her return to New Zealand; however, she says that the break in her work (amounting to some eight/nine years) led to a loss of knowledge, which undermined her competency, so that she lost confidence and did not feel safe in the job as an occupational therapist. This was the reason why she ended her occupational therapist part-time role in 2013, and she has not returned to that career since.

Legal principles

[16] The claim is made pursuant to s 15 of the Act.

> **15 Court may award lump sum payments or order transfer of property**
>
> (1) This section applies if, on the division of relationship property, the Court is satisfied that, after the marriage [, civil union,] or de facto relationship ends, the income and living standards of 1 spouse or [partner] (party B) are likely to be significantly higher than the other spouse or [partner] (party A) because of the effects of the division of functions within the marriage [, civil union,] or de facto relationship while the parties were living together.
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> (2) In determining whether or not to make an order under this section, the Court may have regard to—

(a) the likely earning capacity of each spouse or [partner]:
[(b) the responsibilities of each spouse or partner for the ongoing daily care of any minor or dependent children of the marriage, civil union, or de facto relationship:]
(c) any other relevant circumstances.

(3) If this section applies, the Court, if it considers it just, may, for the purpose of compensating party A,—
(a) order party B to pay party A a sum of money out of party B's relationship property:
(b) order party B to transfer to party A any other property out of party B's relationship property.

(4) This section overrides sections 11 to 14A.

[17] The section provides compensation that relates to the differential between the future earning capacities of the parties to the extent that the differential results from the division of functions within the marriage. Section 15 gives the Court the power to deviate from an equal division of relationship property in order to address significant future disparity. Its aim is to balance the uneven economic effects on the partners in a marriage, and to recognise that an equal treatment of parties leaving a relationship can lead to inequality of result, especially when one partner, during the course of the relationship, gave up work to manage the household. Section 15 requires an assessment of the future economic circumstances of the parties based upon the effects of the division of function during the relationship. There are two established features of s 15. The first is to value what the disadvantaged partner would have earned in the future, but for the intervention of the division of functions. This is the diminution method. The second is to assess how much the advantaged partner's earning capacity has been enhanced by the division of function. This is the enhancement method.

[18] There are three limbs to this section:

(a) Likely disparity in income and living standards;

(b) Causation by the division of functions;

(c) Justice of an award.

[19] The first two establish jurisdiction, the third quantum of any award.

Discussion/findings

[20] The jurisdictional test requires for the disparity in income and living standards to be significantly higher. This is a factual assessment based on the circumstances of the case. The assessment of income focuses on disparity arising after separation; disparity that existed during a relationship cannot be taken into account. With regard to living standard it is not appropriate to conflate lifestyle with living standards. Factors that have been considered in determining the living standard of the parties include the ownership of own home, the ability to work, amount of leisure time and flexibility in terms of freedom to work. The enquiry is whether the income and living standards are likely to be disparate.

[21] At the time the parties separated the applicant was earning approximately $250,000 per year. From that salary he has been able to retain the family home in which he lives and pays expenses on, and he contributes significant costs to the children's activities such as pony riding, private schooling and health needs (see claim for children's expenses). The respondent at the time of separation was earning $22,490 as a teacher aide, which together with family tax credits and child support payments made a total income of $42,848.90. She was in rented accommodation and viewed, she says those expenses claimed by the applicant, as luxury expenditure.

[22] The evidence satisfies me that there was a significant disparity in the likely income and living standards of the parties. The applicant was in a high paying role and the respondent in a relatively low-income role. I am satisfied that the income and the living standards were and are likely to be disparate and the disparity in them is significant and continuing.

[23] To be successful in her claim the respondent must establish that the disparity was an effect of the division of functions within the relationship. In *Scott v Williams*[2] the Supreme Court considered that when there has been a division of functions in a relationship along "traditional lines" resulting in economic disparity post-separation, the working assumption should be that the division of functions caused the disparity. Only

[2] *Scott v Williams* [2017] NZSC 185.

strong evidence of some other cause would be sufficient to limit or negate this working assumption.[3]

[24] The applicant seeks to rebut that presumption:

(a) He says the relationship was relatively short.

(b) He was established in a successful career at the time of the commencement of the relationship, and that the disparity is because of his talent, not a division of functions.

(c) The respondent is capable of working as a full-time occupational therapist, it is her own personal decision not do so. That means that she is not working in a role available to her.

[25] I reject the submission that this is a relatively short marriage. The parties were married for more than 13 years. Children were raised for almost the entire marriage.

[26] As far as the applicant is concerned, he had already qualified as an accountant when the parties married, and he had "set the arc" of his career. He was a substantial income earner (£50,000 to £60,000 sterling in 1999/2000). There appears to have been no question of him giving up his career to care for the children. There was no evidence with regard to what would have happened if the respondent was unable or unwilling to give up her job. Similarly, there was no compelling evidence that the respondent contributed in any particular way to the applicant's career, other than the "traditional" roles within the marriage of her caring for the children and managing the house. She did not partake in any activity that specifically advanced or enhanced his career. This is not to downplay the importance of her being responsible for childcare responsibilities and management of the home, but notes a lack of direct evidence of enhancement or contribution to his career beyond those roles.

[27] With regard to the respondent, she was also in a settled career prior to the marriage, that of occupational therapy. How was her career path affected by the division

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[3] *Scott v Williams* [2017] NZSC 185 paras [309-311].

of functions? There is no evidence from the respondent that she wanted to pursue a management or a higher level career. However, at the time of separation she was not working as an occupational therapist, but working as a lower income teacher aide.

[28] In 2011, when the parties came to New Zealand, the respondent obtained her New Zealand practising certificate as an occupational therapist. Her evidence is that she worked full-time for three months, then part time for 15 months and then ceased her role as an occupational therapist in April 2013.

[29] The respondent's evidence on the reasons for ending her career in occupational therapy are set out in various places in the evidence and expanded on in her oral evidence.

[30] In her first affidavit of 28 October 2016, when acting in her own account, she says:[4]

> 16. I cared for the children, home and supported Carl in his career for 7.5 years. When [our second child] had started school I worked for a year part time 3 days a week (school hours) as an Occupational Therapy Assistant on minimum wages. I was supervised by an Occupational Therapist and did not regain my registration as I was working on a very part time basis. In 2011 I worked for 3 months full-time to obtain a new role. Then I dropped down to working 2 days a week (school hours) to support Carl, and care for the children and home. I was a 'Return to Practise Occupational Therapist' supervised fully. It took me approx. 9 months to regain registration.
>
> 17. March 2013 I resigned from my role to enable me to care for the children's new ponies, (dropping had to be cleaned from the paddock daily), the children and support Carl in his role.
>
> 18. I have not worked as an Occupational Therapist for nearly 4 years. If I wanted to return to practise I would have to complete return to practise study/essays and then find an employer willing to take on a 'Return to Practise O.T.' who would then supervise my fully until they decided that my skills are sufficient in order to regain registration.
>
> It would be very difficult to find an employer willing to employ me as a 'return to practise Occupational Therapist' as I have had 11.5 years away from my career with only 4 years practise that were not consecutive. Much has changed in this occupation which would make my return to this career difficult. The reason why I managed to secure a return to practise role in the past was because it was a very junior role that specialised in training a second year new graduate. I am aware

[4] CB ("CB") pages 43-44.

there are only 4 roles like this in Counties Manukau and many new graduates therapists are going overseas due to lack or work opportunities.

[31] In her affidavit of 8 March 2017, she says:[5]

20. The 9 year 3 month break from the profession proved too long. Knowledge and skill was lost. I was told it was time for me to rotate from Botany to Middlemore to train in a different area. The work was to be full-time, involving two hours per day commute time. This would have meant not being home in time for the children after school and in the holidays. Carl had always agreed that me being home for the children after school, in the holidays, and being available to attend sports days, school camps, school trips, prize givings, assemblies, was always our priority giving our children strong emotional security.

23. Due to [details deleted] and no vehicle, it has been impossible for me to return to O.T. We live in a rural area. [Details deleted]. I was unable to commute to a job out of the area. I was without a car for many months. I borrowed a bike and various cars to get to work in the local school where I now work as a teacher aide.

24. If it was possible for me to return to my profession I most certainly would. I need the higher income to pay for living costs but I need to retrain to return to the profession.

76. …If I had known Carl was planning to divorce me I most certainly would have remained in work and taken up the fulltime rotational role at Middlemore Hospital. He encouraged my resignation. Carl did not help with the children or domestic tasks. Carl and I decided full-time work and two hours a day of travel would put too much pressure on our family and relationship. I enjoyed my role and it was a loss to me but I chose to put the needs of my family and husband first.

79. I need a stable base in which to retrain…

[32] In her affidavit of 22 August 2018, the respondent says:[6]

4. I did not believe that I was proficient enough in the job to keep my clients and myself safe. There had been a lot of changes in the time I had not been working. I had lost my clinical knowledge.

6. When I apply for a Practising Certificate, I have to declare if there is anything I am aware of, that could make me unsafe in my practice. I did not have confidence I could complete the job properly. It was the ethical thing for me to stop working.

[5] CB pages 204, 205 and 216.
[6] CB page 452.

[33] In the respondent's oral evidence she says:

(a) During the period of part time work she successfully applied for a practising certificate.

(b) She did not feel professionally safe in her role, that she had lost confidence and had experienced a knowledge gap as a consequence of the time away from work as an occupational therapist.

(c) That she had not talked about professional safety as a reason for ending her work as an occupational therapist in her earlier evidence because she feared the applicant would use that against her.

(d) That she had not talked about professional safety as a reason at first because, "*I didn't say that at the beginning because I hadn't thought about it, but when I thought it through that was why.*"[7]

(e) The realisation of competency and the knowledge gap together with concern as to safety took time to understand.

(f) She is unable to retrain because she does not have the "capacity or ability".[8] Although she talked of retraining in her affidavits she now considers it, "Beyond my capacity."[9]

(g) There was no formal complaint or pending complaints in place when she left employment.

[34] There is an inconsistency in the respondent's evidence about the reasons for ending her work as an occupational therapist in April 2013, and taking no further steps since then to retrain, upskill or address any knowledge gaps. Indeed there is some discrepancy in the evidence given on this subject between questions answered on day 1

[7] Notes of Evidence ("NOE") page 103, lines 21-22.
[8] NOE page 105, line 5.
[9] NOE page 107, line 18.

(5 December 2018) and day 2 (6 December 2018). In answering questions from the Court:[10]

> Q. When you were answering questions yesterday, the impression I got from what you were talking about was that you recognised at the time in 2013 that your practices were not safe and there were issues over that. But that seems to be a slight contrast to what you were saying today to Ms McCabe that you didn't recognise that at the time, that that's something that came to you upon reflection, which is, they're my words, not your words. Can you answer that discrepancy? Because it does, on the face of it it appears two different aspects, that on one account you're saying you recognise it at the time, and the second, that you only recognised it on reflection.
>
> A. I guess – 'cos at the time when I resigned from the job, I was under extreme pressure from home, and not being treated well at home, so that of course reflected on my work. So I was wondering whether once I wasn't in the relationship if my ability to perform would approve. But then when I was working in the school and having to learn new information, I proved to myself that my ability hadn't. That's just how I was. It wasn't just a reflection on how things were at home.

[35] In the respondent's early evidence, her affidavit of 28 October 2016, the emphasis on the reasons for both ending her occupational therapy full-time employment in 2011 and part time in 2013, are in essence around lifestyle decisions. Although there is a concession to the difficulty of returning to work after a long gap out of the workforce and the challenge of finding work, there is no indication of that being an insurmountable challenge to the respondent.[11]

[36] By the time of the hearing, the respondent was saying that her ending of her occupational therapy work and inability to retrain and upskill so as to return to the workforce as an occupational therapist were and are insurmountable. There is no independent evidence offered on the issue of requirements for retraining, the advances in knowledge and practice that might have challenged the respondent and the availability and duration of such upskilling.

[37] There is no doubt that the respondent would have suffered some degradation of her knowledge, skills and practice in the period she was away from the workforce; however, she did return full-time for a period in 2011, continued part time for 15 months

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[10] NOE page 118, lines 9-25.
[11] CB page 44, paragraph 18.

and obtained her practising certificate. During this period no complaints or employment issues were raised about her performance or competence.

[38] The reason for the respondent ending her employment is a credibility finding. On the balance of probabilities I am unpersuaded her reasons for leaving employment as an occupational therapist were on the basis of professional safety and lack of competency. The respondent's evidence appears to be that this is the reason that she has come to after consideration, but was not the reason at the time. Indeed the reasons given now are at odds with her evidence in her affidavit of 8 March 2017, where the respondent is clear that if she had known about an impending divorce she would have remained in work and taken up a full-time role.[12] This is a clear statement that she was capable of, and had the opportunity for, a full-time role.

[39] Similarly, I find the reasons given by the respondent for having not taken the opportunity to upskill and qualify unconvincing. In the respondent's written evidence she speaks of retraining on several occasions. If the issue was safety and compliance, then I would have expected these reasons to have been raised in connection with her evidence about training and courses. The respondent saying she does not have the capability to do so lacks any evidence and credibility. It appears to be a statement disconnected from her prior evidence.

[40] The respondent's claim to end her employment in 2013 and take no further action in upskilling or qualification is a choice she made. Indeed the evidence cited above that had she known about a divorce she would have remained in her role and changed to full-time, supports the nature of the choice she made. The respondent is clearly saying that at that stage she was capable of entering the workforce in a full-time role as an occupational therapist. This links back to her earlier evidence in her first affidavit of 28 October 2016, where the reasons for not pursuing a career in occupational therapy are more lifestyle-based than professional skill-based.

[41] The way in which the respondent ended her employment is a choice made and one that breaks the link between the division of functions in the marriage and the established disparity in income and living standards. It is clear there was a traditional

[12] CB page 216, para 76.

division of functions in the parties' marriage; however, by 2013 the respondent was working part time as an occupational therapist and by her own evidence was in a position where she could have moved to full-time work as an occupational therapist, the same role as when she entered the marriage. As I have stated before, she has not sought a role beyond that as a practising occupational therapist, for example in management or specialisation.

[42] The link between disparity in income and living standards is not established on the balance of probabilities. There was a traditional marriage and the presumption of a link applies; however, the choices made by the respondent in giving up her employment as an occupational therapist and taking no further steps in the field either by employment or retraining in order to overcome any knowledge gap, is the reason for her not working currently as an occupational therapist, that factor is not one which is a consequence of the division of functions during the marriage. It is the respondent's choices, not the division of function that has resulted in the current situation of her not working as an occupational therapist full-time, the same position held when she entered the marriage.

[43] Therefore, I decline to make an award pursuant to s 15.

The applicant's Superannuation Scheme

[44] The applicant has a United Kingdom superannuation scheme with a formal valuation of $304,000. He opposes a "buy out" of the superannuation as of now, proposing that the respondent share in the scheme when he becomes eligible, which is in 16 years' time.

[45] The basis of this opposition is that it is onerous on him given that there is no entitlement for 16 years, that it will impact his ability to house himself and the children because he will have to raise that sum in addition to the sum to be raised for the buy-out of the respondent's interest in the relationship home. He will not recover the cost of buying out the respondent, that the respondent obtains a windfall at that expense to him, and that although he has an inheritance (of approximately $400,000) if that is used he loses the investment opportunity, and it is philosophically wrong and unfair to have to use that inheritance.

[46] The respondent relies essentially on the principles of *clean break*. She will be aged 69 by the time there is an entitlement for the applicant. She says that her opportunity of rehousing is jeopardised by not receiving now her full entitlement to relationship property, that the applicant has the means to raise substantial sums to buy her out, that she has immediate financial needs, and that since separation she has had very limited access to the relationship property.

[47] I see no reason to delay a buy-out of the scheme. I am not persuaded that the arguments advanced by the applicant are such as to delay a buy-out. The principle of *clean break* is established, and a primary principle and I see no reason for its displacement in the current circumstances. There is nothing unusual in expecting a holder of a superannuation scheme to buy-out the other party, even if there is a delay in entitlement. Risks and costs are no different to those incurred where one party buys out another in order to retain ownership, for example of a relationship home that is subject to the vagaries of the housing market.

[48] There shall be an adjustment to the respondent for half (of the qualifying period) of the applicant's United Kingdom superannuation scheme value.

Children's expenses

[49] The applicant claims adjustment for the children's expenses he has paid totalling $89,168. Those expenses are for ponies, school expenses, opticians and orthodontic work.

[50] The applicant claims the costs are ongoing, they are not luxury costs, that the pony expenses were instigated by the respondent and it is unfair for him to pay when the respondent chose orthodontist work and has not agreed with the children leaving their school.

[51] The respondent says that the items are for the most part luxury, she says that she has a modest income. No evidence of the orthodontic work has been provided. She accepts an involvement in the pony decision, but she cannot pay and that there is a general lack of evidence for the expenses.

[52] Section 18B of the RPA says:

> **18B Compensation for contributions made after separation**
>
> (1) In this section, relevant period, in relation to a marriage, [civil union,] or de facto relationship, means the period after the marriage, [civil union,] or de facto relationship has ended (other than by the death of 1 of the spouses or [partners]) but before the date of the hearing of an application under this Act by the Court of first instance.
>
> (2) If, during the relevant period, a spouse or [partner] (party A) has done anything that would have been a contribution to the marriage [civil union] or de facto relationship if the marriage, [civil union,] or de facto relationship had not ended, the Court, if it considers it just, may for the purposes of compensating party A—
>
> (a) order the other spouse or [partner] (party B) to pay party A a sum of money:
>
> (b) order party B to transfer to party A any property, whether the property is relationship property or separate property.
>
> (3) In proceedings commenced after the death of 1 of the spouses or [partners], this section is modified by section 86.

[53] The discretion of s 18B is a wide one, which takes account of all contributions to the relationship. One of the factors that I consider with regard to contribution is that the applicant has had control of most of the relationship property other than small items, in particular, the relationship home. I acknowledge that his contribution on childcare is that he currently has care of one of the children and shares care of the younger child. It is also established by the s 15 evidence that he has a substantially higher income than the respondent.

[54] Evidentially the children's expenses claim is weak. This evidence is a balance sheet provided by the applicant and placed into evidence on the day of hearing. There are no supporting invoices for the expenses.

[55] Taking the overall contributions of the parties and the evidential weakness I decline to make any adjustment to the applicant for the children's costs.

Respondent's superannuation

[56] The respondent has two United Kingdom superannuation schemes:

(a) A UK state pension.

(b) A UK local government pension (Essex County Council).

[57] The status and valuation of the respondent's United Kingdom superannuation schemes have been the subject of further submissions and evidence after the conclusion of the hearing on 5 and 6 December 2018. Both parties through counsel, have had the opportunity of addressing the issue of the respondent's UK superannuation schemes.

[58] With regard to the state pension, the respondent says that there is no value. Information is provided from the UK state pension forecast and New Zealand Work and Income. It is said that she will receive a state pension of £84.69 sterling per week from 18 May 2032 if no further contributions are made, and £150.93 per week from 18 May 2032 if further contributions are made. It is submitted that she will be entitled to a New Zealand superannuation scheme and those payments are dependent on any overseas benefit or pension she receives. Her New Zealand pension is reduced on a dollar for dollar basis so that she either receives the New Zealand superannuation and the UK pension is paid directly to the New Zealand government, or she receives the UK pension direct and New Zealand superannuation "tops up" the sum to her New Zealand pension entitlement. She says that there is no value to the pension.

[59] The applicant argues that there is value on the basis that it is a defined benefit scheme and that the United Kingdom pension is an asset for UK relationship property purposes. He argues that to say there is no benefit fails to account for contingencies for example, the respondent leaving New Zealand and therefore not claiming New Zealand superannuation, in which case she can claim the UK pension outright, and for any potential changes in the system. He argues that if his superannuation scheme entitlement is accounted for at the time of division then he pays half of his entitlement, but the respondent retains all of her entitlement. He says that he is unlikely to obtain any New Zealand superannuation.

[60] With regard to the UK local government pension, less focus has been placed on this item. It appears to be accepted as relationship property but there is no valuation. The respondent argues that for such a small entitlement, which is £218.77 sterling per annum, that it would be financially unfeasible to obtain an actuarial valuation.

[61] The applicant has valued the total pension benefit for a UK pension benefit of the respondent using the same basis as the actuarial valuation of his superannuation. He estimates that the total valuation of both UK pensions is $61,000.

[62] Dealing with the state pension first, s 2 Property (Relationships) Act 1976 defines a qualifying superannuation scheme. The entitlement must be derived wholly or in part from contributions made by the spouse or civil union or de facto partner or from the fact of employment.

[63] The right to New Zealand superannuation under the New Zealand Superannuation Act 2001 is not therefore relationship property under this rule. Similarly, the United Kingdom state pension is a state pension. It must be so recognised, if it is taken account of the way it is in calculation of New Zealand superannuation entitlements. There is no relationship property value in a state pension and therefore the United Kingdom state pension has no relationship property classification in New Zealand.

[64] With respect to the UK local government pension, the only guide provided is that provided by the applicant. The UK local government represents 4.7 percent of the total calculated pension benefit. Applying that to the sum calculated by the applicant, this provides a valuation of $2800. I am therefore valuing the respondent's UK local government superannuation at $2800. The respondent is to account to the applicant for $1400.

Conclusion

[65] On the issues I confirm as follows:

(a) The Mercedes valuation is set at $35,000.

(b) The s 15 claim is declined.

(c) The applicant's superannuation is to be adjusted for now.

(d) The children's expenses claim is declined.

(e) The respondent's UK state pension is not relationship property.

(f) The respondent's UK local government superannuation is a relationship property, with an adjustment to be paid by the respondent to the applicant in a sum of $1400.

[66] These orders and decisions can now be incorporated into those matters agreed between the parties and a draft order submitted.

[67] Costs are reserved. If costs are sought by either party, then submissions are to be filed within 14 days and a right of reply 14 days thereafter.

A P Goodwin
Family Court Judge