

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

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**IN THE FAMILY COURT
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU
KI ŌTAUTAHI**

FAM-2022-009-001676

[2024] NZFC 4027

IN THE MATTER OF	PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[JOANNA POCOCK] Applicant
AND	[ROY WEBSTER] Respondent

Hearing: 27 March 2024

Appearances: M Sandom for the Applicant
R Loversidge for the Respondent

Judgment: 3 April 2024

RESERVED JUDGMENT OF JUDGE J K HAMBLETON

[1] Ms [Joanna Pocock] and Mr [Roy Webster] agree that they met volunteering at [details deleted]. They agree that their relationship developed and that at a later point they lived together with Ms [Pocock]'s five children. They also agree their relationship ended around mid-2020.

[2] Almost four years later, they have not been able to agree on the division of their property. There is an issue concerning Mr [Webster]’s property at [address 1 - details deleted] (“[address 1]”) which is obstructing any progress.

[3] Mr [Webster] formerly owned the property with his wife, Ms [Autumn Munsen]. Their marriage ended in January 2010. By July that same year, Mr [Webster] and Ms [Munsen] had reached agreement on the division of their relationship property. On 21 July 2010, Mr [Webster] formed the [Webster] Family Trust (“the Trust”) and entered into an agreement to sell [address 1] to the Trust. Settlement did not happen until 11 August 2010. On that date, [address 1] was transferred into Mr [Webster]’s sole name, and then transferred into the names of Mr [Webster] and Mr [Marvin Anderson] as trustees of the Trust.

[4] Ms [Pocock] says that transfer was a disposition of property to defeat her claim or rights under s 44 of the Property (Relationships) Act 1976.

[5] Ms [Pocock] and Mr [Webster] lived in a de facto relationship from December 2010 (or January 2011 at the latest) until June 2020. They do not have any children together.

Issue for determination

[6] The issue to be determined is whether the disposition of [address 1] was a disposition of property to defeat Ms [Pocock]’s claim. Resolving that issue requires an assessment of whether in August 2010, Mr [Webster] and Ms [Pocock] had the clear and present intention to become parties to a de facto relationship.¹

The law

[7] Section 44 of the Act provides:

44 Dispositions may be set aside

- (1) Where the High Court or the District Court or the Family Court is satisfied that any disposition of property has been made, whether for

¹ *M v H* [2017] NZHC 2385 at [47] cited with approval in *Sutton v Bell* [2023] NZSC 65, [2023] 1 NZLR 169 at [64].

value or not, by or on behalf of or by direction of or in the interests of any person in order to defeat the claim or rights of any person (**party B**) under this Act, the court may make any order under subsection (2).

- (1A) The court may make an order under this section on the application of party B, or (in any proceedings under this Act or otherwise) on its own initiative.
- (2) In any case to which subsection (1) applies, the court may, subject to subsection (4),—
 - (a) order that any person to whom the disposition was made and who received the property otherwise than in good faith and for valuable consideration, or his or her personal representative, shall transfer the property or any part thereof to such person as the court directs; or
 - (b) order that any person to whom the disposition was made and who received the property otherwise than in good faith and for adequate consideration, or his or her personal representative, shall pay into court, or to such person as the court directs, a sum not exceeding the difference between the value of the consideration (if any) and the value of the property; or
 - (c) order that any person who has, otherwise than in good faith and for valuable consideration, received any interest in the property from the person to whom the disposition was so made, or his or her personal representative, or any person who received that interest from any such person otherwise than in good faith and for valuable consideration, shall transfer that interest to such person as the court directs, or shall pay into court or to such person as the court directs a sum not exceeding the value of the interest.
- (3) For the purposes of giving effect to any order under subsection (2), the court may make such further order as it thinks fit.
- (4) Relief (whether under this section, or in equity, or otherwise) in any case to which subsection (1) applies shall be denied wholly or in part, if the person from whom relief is sought received the property or interest in good faith, and has so altered his or her position in reliance on his or her having an indefeasible interest in the property or interest that in the opinion of the court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.

[8] Section 44 is not restricted to dispositions made after the commencement of a marriage, civil union or de facto relationship. It applies to any disposition to defeat the claim or rights of the other party, including when the parties have not yet entered

into a de facto relationship but have committed sufficiently to doing so.² The test formulated by the Supreme Court in *Sutton v Bell* is:³

For a disposition of property to have been made in order to defeat the claim or rights of party B, there must be sufficient certainty that party B will have a claim or rights to justify the application of s 44(1) to the disposition. So, if the disposition is made in circumstances where the parties are in a romantic relationship and/or are living together but do not have a clear and present intention to become parties to a de facto relationship, then we do not consider that it would be right to infer an intention to defeat a claim or rights that may, or may not, arise in the future, depending on how the relationship between the parties develops.

[9] The owning party who made the disposition does not need to have the motive or intent to defeat the non-owning party's claim or right; if they know that an effect of the disposition would be to defeat the claim or right, then the necessary intent can be inferred.⁴

Evidence

[10] Affidavits were filed by each of the parties as well as:

- (a) Ms [Pocock]'s adult daughter [Brenna Pocock];
- (b) Mr [Bill Godfrey] who was Mr [Webster]'s accountant for many years and his friend;
- (c) Mr [Marvin Anderson], who is Mr [Webster]'s friend and a trustee of the Trust; and
- (d) Mr [Connor Best] who, with his wife, lived at [address 1] with Mr [Webster] from around 3 August 2010 to around 12 October 2010.

[11] The parties required each other to be available for cross-examination. Ms [Pocock] also required Mr [Best] for cross-examination. The evidence of the remaining three deponents was not challenged.

² *Sutton v Bell*, above n 1, at [50].

³ At [69].

⁴ *Sutton v Bell*, above n 1, at [92]-[95] citing *Regal Castings Ltd v Lightbody* [2008] NZSC 87, [2009] 2 NZLR 433 at [52]-[54].

In August 2010, did Mr [Webster] and Ms [Pocock] have the clear and present intention to become parties to a de facto relationship?

[12] Mr [Webster] says when he made the transfer to the Trust, he was not in a long-term relationship with Ms [Pocock] and had no intention to be in a long-term relationship with her.

[13] The parties met in 2009 when they were both volunteering at [details deleted]. The organisation had monthly meetings which both would attend. Their growing friendship coincided with the final stages of Mr [Webster]'s marriage. On 21 January 2010, Mr [Webster] moved out of [address 1] and into rented accommodation. The relationship between Mr [Webster] and Ms [Pocock] had developed into a romantic relationship in early 2010, and became a sexual relationship after he started living apart from Ms [Munsen].

[14] In January 2010, Mr [Godfrey] says Mr [Webster] told him that his relationship with Ms [Munsen] had ended. They talked about the settlement and Mr [Godfrey] says:

I then suggested that as his equity in the property would now be significantly reduced, it might be time to consider transferring the property to a trust and he could then start forgiving the debt that would be owed by the trust to him for the equity that he held. [Roy] did not know much about trusts, and I advised him about protection of the family home from creditors and removing the asset from being included in any joint assets in the event of any future relationship split up.⁵

Mr [Godfrey] does not remember any discussion of Mr [Webster] being in a new relationship; he says they were discussing the possibility of a future relationship.

[15] Mr [Webster] sought legal advice following that conversation, together with advice about relationship property matters regarding his settlement with Ms [Munsen].⁶ Mr [Webster] says these discussions began prior to his relationship with Ms [Pocock]. However, I find that the discussions began after the commencement of his romantic relationship with Ms [Pocock], as established by Mr [Godfrey]'s evidence.

⁵ Affidavit of [Bill Godfrey], sworn 4 April 2023.

⁶ Affidavit of [Roy Webster], sworn 16 December 2022.

[16] In February 2010, Mr [Webster] asked Mr [Anderson] to be a trustee of the Trust.

[17] Also in February 2010, Mr [Webster] attended Ms [Brenna Pocock]'s birthday party. Ms [Pocock] deposed that Mr [Webster] helped with the set-up before the party and was introduced to the family. Ms [Brenna Pocock] says she knew Mr [Webster] as her mother's partner, that she had met him on four prior occasions, and that she knew it was a serious relationship because her mother introduced him to the family. This evidence was not challenged during the hearing.

[18] In May 2010, Ms [Pocock] celebrated her birthday by having dinner with her children and Mr [Webster]. Mr [Webster] paid for the dinner. He said he did this as a friend, but the circumstances give the impression that Ms [Pocock] was fostering a relationship between Mr [Webster] and her children.

[19] The couple were spending time together on a regular basis, with Mr [Webster] often staying at Ms [Pocock]'s home. Ms [Pocock] says that she met Mr [Webster]'s best friend Mr [Anderson] and his wife during the period between late January 2010 and August 2010. Ms [Pocock] says that the two couples (and Mr and Mrs [Anderson]'s children) would often have takeaways for dinner on a Friday night. Mr [Webster] denies that this happened more than once. He indicated in his affidavit that Mr [Anderson] would confirm this, but that evidence was not filed. Sometime during the year, Ms [Pocock] also met Mr [Webster]'s long time work colleague, [Ben Niles].⁷

[20] Mr [Webster] describes himself as a private person, who does not talk about his relationships. Yet he had become part of Ms [Pocock]'s family and he had introduced her to his close friends and a work colleague.

[21] On 6 August 2010, Mr [Webster] moved back into [address 1]. He shared the home with Mr [Connor Best] and Ms [Vanessa Best] until October 2010. Mr [Webster] said that Mr and Mrs [Best] could not remember Ms [Pocock] staying at [address 1] while they were living there. Mr [Best]'s affidavit evidence was emphatic on that point; however, he was less certain when cross-examined. He said he could not

⁷ Notes of evidence, page 20.

remember Ms [Pocock] being there, but acknowledged that that this was 14 years ago and he had a lot of other stuff on his plate at the time. He also was not sure if Mr [Webster] was at [address 1] on the night of the September earthquake (Mr [Webster]'s evidence was that he was not). Mr [Best] acknowledged there were other occasions where he could not be sure whether Mr [Webster] was there or not.

[22] Around two months later, Ms [Pocock] and her children moved into [address 1]. Mr [Webster] says this was because Ms [Pocock]'s tenancy came to an end, and it made sense for her to move in.

Conclusion

[23] Mr [Godfrey]'s evidence was that Mr [Webster] had just come out of a 26-year marriage and was not looking for a serious relationship straight away. Nonetheless, that is what happened.

[24] Mr [Webster] describes the property [address 1] as having been his life. It has been his home since he was 23 years old. He says he has:⁸

...done everything on it from bare block of land, fenced it, planted all the trees, built the hay barns, built the house, landscaped it all. It's my life's work.

[25] Mr [Webster]'s affidavit evidence was that he had been thinking about the Trust for some time and he believed it was the best way of protecting his property for the future.⁹ He knew from his conversation with Mr [Godfrey] in January 2010 that a Trust provided protection against a relationship claim. It took several months to divide the relationship property between himself and Ms [Munsen] and establish the Trust. During this time, the relationship between Mr [Webster] and Ms [Pocock] continued and strengthened. Mr [Webster] said in evidence:¹⁰

Q So my question before was at the time you transferred it in August you did know that it would take it out of the relationship property pool of you and [Joanna] didn't you?

⁸ Notes of evidence, page 30.

⁹ Affidavit of [Roy Webster], sworn 19 April 2023.

¹⁰ Notes of evidence, page 30.

A We weren't in a serious relationship. So it didn't come to mind. The other reason it went into a trust was I was self employed and my accountant [Bill] said to me that it would be safer to put it into a trust so no creditors could touch the property if I had issues with the business.

[26] I note the use of the word "other" in that answer.

[27] Mr [Webster] had been self-employed for some time but had not considered a trust to protect asset loss. The home at [address 1] clearly has significance to him, and it had been put at risk through one relationship ending. When Mr [Webster] had the first conversation with Mr [Godfrey] in January 2010, I accept that he and Ms [Pocock] were not in a serious relationship. At the time of the disposition in August 2010, however, there were signs of permanence in their relationship. They had been in an exclusive relationship for approximately 8 months, they presented to family and friends as a couple, and the evidence showed they were involved in each other's lives for the mundane ordinary events of life as well as for special occasions.

[28] I find that there was a clear and present intention to become parties to a de facto relationship. I find that Mr [Webster] transferred [address 1] into the Trust in the knowledge that this would defeat Ms [Pocock]'s future claim under the Property (Relationships) Act and, therefore, that he intended to defeat that claim. Section 44 applies to the disposition to the Trust.

[29] At the end of the hearing, Ms [Pocock]'s counsel confirmed that her client was only seeking a declaration that s 44 applies. The Court has not been asked to make any of the orders set out in s 44(2).

Costs

[30] Costs should follow the event. Neither party is in receipt of legal aid. Ms [Pocock] will have incurred costs and as the successful party is entitled to recover those. I direct costs in her favour on a 2B basis. If the quantum of costs cannot be agreed between the parties according to the schedule, then further directions can be sought from the Court. Those directions should be sought within 21 days.

Progression of the proceedings

[31] The parties indicated to the Court that they would work to resolve the dispute once they had clarity about this issue. I direct that a judicial conference is to be allocated no earlier than 4 weeks from now, with 30 minutes to be scheduled, to make directions for progression of the proceedings.

[32] The issue of contributions was referred to in an earlier minute of the Court. Ms [Pocock] has not filed the evidence as directed and has 21 days from now to do so.

[33] If counsel are agreed on the directions sought for progression, then they should record those in a joint memorandum. The directions may be able to be made in chambers and the conference vacated. In any event, counsel are directed to file a memorandum 5 working days before the judicial conference addressing any issues resolved, any issues remaining in dispute, and any directions sought.

Judge JK Hambleton
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 03/04/2024