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Question

“Using real life examples, how do you balance “endeavour” and “chance” when advising on post-separation accrual of income and capital (wealth) e.g. bonuses, the increase in share value of companies, development work on a property etc.?”

Question Breakdown

- Luck
- Hard work

The Bin Bag Millionaire

- Cowan v Cowan [2001] EWCA CIV 679 (paragraph 70)

The Tax Scheme King

- M v M [2004] EWHC 688 Fam

Miller v Miller [2006] UKHL 24

- Lord Mance's Guidance: -
- The period during which the parties were making their different mutual contributions to the marriage was obviously relevant.
- The increase in value of the shares between September and April 2003 and until October 2004 or judgment given in April 2005 was contributed to by the husband's further investment of time and effort, independent of any contribution by the wife.
- The wife had no right to any part of the husband's shareholding (in relation to which he carried the risk).

Rossi v Rossi [2006] EWHC 1482 (Fam)

Mostyn found that the whole of the wife's assets were from post-separation accrual and husband had no entitlement to them

Rossi v Rossi [2006] EWHC 1482 (Fam)

- Paragraph 24 Guidance: -
 - The MCA 1973 requires all the assets to be valued at the date of trial.
 - The value of assets brought into the marriage by gift and inheritance (other than the former matrimonial home) should be excluded as non-matrimonial property.
 - Non-matrimonial Assets acquired or created after separation may qualify as non-matrimonial property, if said property was acquired or created by that party's personal subsequent efforts and not using an asset created during the marriage.
 - Passive economic growth on matrimonial property that arises after separation will not qualify as non-matrimonial property.

Rossi v Rossi [2006] EWHC 1482 (Fam)

- Where the post-separation asset is a bonus or other earned income, if the payment relates to a period: -
 - When the parties were cohabiting then the earner cannot claim the property to be non-matrimonial; or
 - Payments are relating to a period immediately following separation that is too close to the marriage to justify categorisation as non-matrimonial.
- The following factors decide whether a non-matrimonial post-separation accrual should be shared, and if so in what proportions?
 - Did the applicant proceed diligently with his claim?
 - Did the party with the benefit of the accrual treat the other party fairly during the period of separation?
 - Does the party with the benefit of the accrual have the prospect of making further gains after the division of assets?

CR v CR [2007] EWHC 3334 (Fam) “Financial Continuum”

- Background: -
 - The husband disputed his wife’s entitlement to 50% share in assets accrued since the date of separation.
- The Court decided that all post accrual assets would be treated as matrimonial property because the assets accruing to the husband post-separation did so because of the wife’s continued commitment to the family and domestic infrastructure.
- The wife’s support was intrinsic to the husband achieving his position and acquiring the post-separation assets.
- The husband achieved a “financial continuum”, the ground-work for which was laid and the seeds sown during the parties’ married life together.

The Court should still take a broad view especially where the husband’s asset-accruing role has not changed since the separation and where accruals have not come from any new source of risk, endeavour or luck.

Jones v Jones [2011] EWCA Civ 41: “Spring Board effect”

- Husband argued at trial the value of company had increased substantially since sep.
- Therefore his wife should not have a share.
- This argument was rejected by Charles J at the Court of Appeal.
- At the date of separation there was a spring board or latent potential in place in husband’s company.
- The entire increase in value up to trial was attributable to this “Spring Board”

Bonuses

- P v P [2007] EWHC 2877 (Fam)– *Bonuses & deferred benefits*
- Husband relied on fact that two large bonuses formed a substantial part of the post-separation accrual.
- This had accrued in the 2.5 years since sep.
- Other deferred benefits still not fell in.
- Moylan J noted that weight was to be given to the fact some resources had accrued through the husband's earnings since sep.
- This was a matter for the courts discretion.

Bonuses

- H v H [2007] EWHC 549 (Fam) – *Run off years*
- Wife received $\frac{1}{3}$, $\frac{1}{6}$ and $\frac{1}{12}$ of husbands future bonuses.
- Approach in Rossi was not followed.
- Took a much more flexible and discretionary view.

B v B [2010] EWHC 193 (Fam) : “Bonuses”

- Background: -
 - The husband was due to receive deferred benefit bonuses made up of cash and shares.
 - The wife sought an equal share of these assets, including a 50% share of the bonuses.
- In this event the Court decided that equal sharing of all the assets (including the husband’s bonuses) was not appropriate.
- To do so would ensure that the wife received a substantial part of wealth accrued as a result of the husband’s endeavours since the parties separated.
- In this case equal division of the assets could not be justified by reference to needs.

Summary

- JB v MB [2015] EWHC 1846 (Fam)
- Mostyn J

“Our decisions are not completely consistent ... but they are sort of travelling in the same direction ... really”
- Roberts J

“Continuum verses new ventures”

Cited Case Law

- Cowan v Cowan [2001] EWCA CIV 679
- M v M [2004] EWHC 688 Fam
- Miller v Miller [2006] UKHL 24
- Rossi v Rossi [2006] EWHC 1482 (Fam)
- Jones v Jones [2011] 1 FLR 1723
- CR v CR [2007] EWHC] 3334 (Fam)
- B v B [2010] EWHC 193 (Fam)
- P v P [2007] EWHC 2877 (Fam)
- H v H [2007] EWHC 459 (Fam)
- JB v MB [2015] EWHC 1846 (Fam)

Useful Case Law

- H v W [2013] EWHC 4105 (Fam)
- S v S [2006] EWHC 2339 (Fam)
- JL v SL [2015] EWHC 360 (Fam)
- S v AG [2011] EWHC 2637 (Fam)
- K v L [2011] EWCA Civ 550
- Lillyman v Lillyman [2013] 1 FLR 47
- Cooper – Hohn v Hohn [2014] EWHC 4122 (Fam)
- B v B [2013] EWHC 1232 (Fam)
- Waggott v Waggott [2018] EWCA Civ 727