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What is the current
climate in courts in
awarding more than 50%
in a division of
matrimonial property in
favour of a spouse who
has given up a career and
looked after the family?

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Alison Edmondson

Director

SKO Family Law Specialists

01313226669

alison.edmondson

@sko-family.co.uk

Discretion?

The exercise of applying the s.9 principles is “essentially one of discretion aimed at achieving a fair and practicable result in accordance with common sense”.

Per Lord Hope in *Little v Little* (1990 SLT 785)

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Discretion?

“there was no getting away from the fact that the directions in the 1985 Act were designed to reduce the scope of the court’s discretion to the minimum that was consistent with enabling the court to deal with each on its own facts” and “there is also no room here for ... the development of general judicial practice”

Per Lord Hope in *Miller v Miller and McFarlane v McFarlane*

[2006] UK HL 24

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Statutory framework

Family Law (Scotland) Act 1985

9 Principles to be applied.

(1) The principles which the court shall apply in deciding what order for financial provision, if any, to make are that—

(a) the net value of the matrimonial property should be shared fairly between the parties to the marriage or as the case may be the net value of the partnership property should be so shared between the partners in the civil partnership;

(b) fair account should be taken of any economic advantage derived by either person from contributions by the other, and of any economic disadvantage suffered by either person in the interests of the other person or of the family;

(c) any economic burden of caring, (i) after divorce, for a child of the marriage under the age of 16 years (ii) after dissolution of the civil partnership, for a child under that age who has been accepted by both partners as a child of the family or in respect of whom they are, by virtue of sections 33 and 42 of the Human Fertilisation and Embryology Act 2008, the parents should be shared fairly between the persons;

(d) a person who has been dependent to a substantial degree on the financial support of the other person should be awarded such financial provision as is reasonable to enable him to adjust, over a period of not more than three years from (i) the date of the decree of divorce, to the loss of that support on divorce, (ii) the date of the decree of dissolution of the civil partnership, to the loss of that support on dissolution,

(e) a person who at the time of the divorce or of the dissolution of the civil partnership, seems likely to suffer serious financial hardship as a result of the divorce or dissolution should be awarded such financial provision as is reasonable to relieve him of hardship over a reasonable period.

(2) In subsection (1)(b) above and section 11(2) of this Act— “economic advantage” means advantage gained whether before or during the marriage or civil partnership and includes gains in capital, in income and in earning capacity, and “economic disadvantage” shall be construed accordingly; “contributions” means contributions made whether before or during the marriage or civil partnership; and includes indirect and non-financial contributions and, in particular, any such contribution made by looking after the family home or caring for the family.

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Coyle v Coyle

2004 Fam LR 2

“It is important to recognise that Parliament did not, in the 1985 Act, provide that whenever a couple divorce after a marriage in which one has been the breadwinner and one has been the homemaker, the latter must receive extra and compensatory financial provision on divorce. The section is quite specific. Before the principle here relied on can be taken into account it must be established that there has been an identifiable economic advantage which derives from an identifiable contribution by the other spouse and it must appear fair to the court to take account of it.”

At paragraph 37

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Coyle v Coyle (continued)

“in applying the statutory provisions, the question arises as to whether any economic disadvantage suffered by the pursuer has been balanced by economic disadvantage suffered by the defender and whether any imbalance will be correct by sharing the net value of the matrimonial property. Moreover, the court is directed to take "fair account" which clearly involves an exercise of discretion. These requirements underline that there is expected to be an interplay between the principles enshrined in s.9[1][a] and [b] so that an overall view of the fairness and reasonableness of the outcome must be looked at.”

At paragraph 49

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Coyle v Coyle (continued)

Having first calculated the value of one half of the net matrimonial property to which the wife is entitled at £565,000, “the question then arises as to whether she should receive any further payment in recognition of the application in this case of the principle enshrined in s.9[1][b] of the 1985 Act. Whilst recognising that the principle enshrined in s.9[1][b] of the 1985 Act clearly applies in this case I have reached the view that no further award should be made but only because of the way in which I propose to order that the defender make payment to the pursuer of the sum due to equalise sharing of the matrimonial property”

At paragraph 71

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Coyle v Coyle (continued)

“I am, however, well aware of the fact that the real value to her of such an award will be significantly in excess of £565,000, given the increase in value of the house, a surplus which will be available for her to call on by way of realisation or secured lending, if she requires it, but it is precisely for that reason that I propose to make no specific award under reference to s.9[1][b] of the 1985 Act. Because of the way in which I propose to order that equalisation of the net value of the matrimonial property be achieved, I am satisfied that the clear imbalance arising from the economic disadvantage sustained by the pursuer will be corrected by an award of the sum which is produced as a result of the equalisation process. Had it been that equalisation could only have been achieved by the awarding of a cash payment, then I would certainly have provided for payment by the defender of a further substantial cash sum as I would not have regarded the sharing of the matrimonial property as adequately recognising the extent of the economic imbalance in this case, where the defender has not been disadvantaged and has, as a result of his working life, an interest in a company and pension scheme which are clearly of substantial value, with the option of carrying on in business for a number of years into the future, all in addition to his share of the matrimonial property, some of which he has converted into valuable investments in heritable property and the pursuer has no qualifications, no job, no pension and, on the evidence, no realistic prospect of earning her living, although matters would have been rather different had she been able to pursue her airline career”

At paragraph 71

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Jack v Jack
[2015] CSOH 91
[2016] CSIH 75

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LV v IV
[2018] CSOH 80

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F v R
[2018] SC EDIN 51

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C v C 2018
GWD 38-471

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Douglas v Douglas [2019]
SC PER 4

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Fox v Fox
[2019] SC STI 3

S K O

Alison Edmondson
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