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S O L I C I T O R S

## LawTalk Blog



# Does having the care of a disabled child over 18 impact on property settlement?

**Date: Tuesday April 12, 2016**

### **Scenario:**

Betty has the primary care of her 20 year old son Billy who is on the Autism Spectrum. Betty has been the primary carer of Billy since his birth. Due to his condition, Billy requires constant supervision and despite now being an adult, Billy does not have the faculties to live alone.

One year ago Betty's husband (and Billy's father) Bobby, separated from Betty and left the former matrimonial home. Since separation Bobby does not assist Betty at all with Billy's care.

Prior to separation Betty worked part-time as a florist. Betty worked each Thursday and Saturday. Each Thursday Betty's mother came around to the house to care for Billy and each Saturday Bobby would care for Billy.

Since separation Bobby has refused to assist with Billy's care at all and consequently Betty had to resign from her job. She is now in receipt of a Carer's Pension from Centrelink for her care of Billy.

Two days ago Betty received a letter in the post from Bobby's lawyer. The letter contained an offer for property settlement of a 50:50 split of the matrimonial assets. There was no mention in the letter of any adjustment being made in Betty's favour due to her fulltime care of their adult son (whose medical condition prevents him from caring for himself).

Betty is now very anxious. Has there been no adjustment in the property settlement offer in her favour because Billy is over 18?

**Answer:**

In Australia, the *Family Law Act 1975* (the “Act”) determines that a number of considerations that must be taken into account in ensuring a fair and equitable division of the net matrimonial assets in a property settlement.

Under the Act one of those considerations is often referred to as “future needs” or “future factors”. Examples of “future needs” considerations include:

- the age and state of health of each party;
- the income, property and financial resources of each party;
- the commitments that either party might have to support him or herself or others, including a child/children;
- a standard of living that in normal circumstances is reasonable;
- any other fact or circumstance that might be taken into account.

Future needs factors suggest that Betty may get an adjustment in the property settlement due to her fulltime care of Billy. Since separation Betty has had to quit her job to care for Billy, which has affected her income and earning capacity. Although Billy is not a child of the marriage who is under the age of eighteen, Betty continues to bear the responsibility to support Billy as he is unable to care for himself. Betty clearly has increased future needs due to her fulltime and ongoing care of Billy.

It would also be sensible for Betty to consider whether an “Adult Child Maintenance” claim could be made by or on behalf of Billy under the Act.

Adult Child Maintenance is where one parent has to pay the other parent or directly to the child an agreed or ordered sum to contribute to the adult child’s welfare and care. Such claims can be made by the parent or the adult child. In an Australian landmark case, it was recognised that Adult Child Maintenance for a disabled child of the marriage was very clearly acknowledged under the Act.

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