



ANDERSONS
S O L I C I T O R S

LawTalk Blog



Terminal illness and Family Law property settlement

Author: [Camille McDonald](#)

Email:

Phone: 08 8447 4911

Date: Tuesday July 26, 2016

Scenario:

A husband and wife have been married for 35 years.

Eighteen months ago the husband was diagnosed with terminal lung cancer and given twelve months to live. Due to the stress of the husband's diagnosis, as well as long standing issues between the husband and wife during the marriage, the parties decide to separate.

Shortly after separation the wife goes to visit a lawyer. At the appointment she highlights the fact that her husband is not expected to live past the next year. The lawyer raises the issue that the husband's limited life span may give rise to an argument that the wife has more significant "future needs" and therefore could result in an adjustment in her favour in a property settlement.

What are the wife's chances of obtaining an adjustment based on her estranged husband's limited life expectancy?

Answer:

It is not unexpected that such a topic would be considered unpalatable by many. It is also not surprising that such a topic creates a segue into a moral debate, as well as various social and personal considerations.

While the moral perspective of such an issue is inarguably important, from a legal perspective, the Court is bound to examine the issue in the context of the *Family Law Act* and not an examination on the individual and personal opinion of the judiciary.

The recent case of *Morcomb &Lennox* (2016) FCCA 485, examined this very issue and the presiding Judge (Judge Brewster) noted specifically the distasteful nature of such a legal matter. In paragraph 32 of his judgement, His Honour wrote:

“It goes without saying that it is quite distasteful to contemplate reducing a party’s entitlement to a share of property because he suffers from a terminal illness. However, the matter has to be approached in a dispassionate way”.

His Honour was clearly referring to his ability to Judge on such a matter in light of the legislation and his inability to Judge the matter based on moral grounds. Reluctantly, his Honour made an adjustment in the wife’s favour in this case. This decision was met with much criticism, although it is clear that the Judge was simply following the legislative provisions relevant to “future needs”.

It is clear that while in the case of *Morcomb &Lennox* (2016) FCCA 485, the wife was entitled to an adjustment in her favour due to the husband’s limited lifespan, such matters will turn on the facts of each individual case.

Each such case will be treated by the Court on a case-by-case basis and therefore the outcome is not definite. Given the great deal of reproach that resulted from this decision, it will be nothing short of interesting to see how such matters are dealt with by the Courts in the near future.

If you would like some more information or advice about the above or a [Family Law](#) inquiry generally, feel free to get in touch directly with today’s blog writer, [Camille McDonald](#).

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.