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Spousal maintenance case goes all the way to the High Court of Australia - Hall v Hall

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In 2016, the High Court of Australia considered the entitlements of parties under a Family Court of Australia Order for spousal maintenance. The case was *Hall v Hall* [2016] HCA 23.

Under s.72(1) of the *Family Law Act 1975* (Cth) ('the Act'), a party to a marriage is liable to maintain the other party, to the extent that they are reasonably able to do so and only if the other party is unable to support themselves adequately.

The making of an order under this section is known as "[spousal maintenance](#)". In considering whether an order for spousal maintenance should be made, the Court will look at any relevant matter referred to in s.75(2) of the Act.

The background to the *Hall v Hall* spousal maintenance case

The husband was born in 1952 and is a property developer. The wife was born in 1972 and is a medical practitioner. The husband and wife were married in 2001 and separated in 2013. They had two children together.

On 2 October 2013 the wife filed an application in the Family Court seeking [property settlement orders](#). The wife amended her application to include a claim for permanent spousal maintenance and urgent interim spousal maintenance.

The wife's financial circumstances, as set out in her financial statement, were that she owned two luxury motor vehicles and had an interest, of an unknown value, in her late father's estate. The wife did not have a copy of her father's Will and did not know the particulars of his estate.

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On 9 December 2013 the primary Judge heard the wife's application for interim spousal maintenance. The primary Judge ordered that the husband was to pay the wife \$10,833 per month until the final determination of the matter. The primary Judge was satisfied of the wife's need for spousal maintenance and of the husband's ability to pay.

The husband filed an application to set aside the orders made by the primary Judge. The basis of this application was that the husband had received information, by way of an [affidavit](#), in relation the wife's father's Will.

"... a 'wish' of the father that the wife should receive a lump sum payment of \$16,500,000."

This information explained that the only clause of the Will which referred to the wife was a clause which expressed as a 'wish' of the father that the wife should receive a lump sum payment of \$16,500,000. This payment was to occur on the first of a number of specified events occurring. One of these events was if the wife became divorced from the husband. This clause went on to express a 'wish' that the wife should receive an annual payment of \$150,000 until the date of that lump sum payment.

The wife filed an affidavit in opposition to the husband's application. That affidavit set out that the wife had recently spoken to one of her brothers who had explained the contents of their late father's Will to her. Prior to this discussion the wife had no knowledge of the contents of the Will. The wife stated in her affidavit that she had not received any income or payment from her late father's estate. She did not say however whether or not she had requested the payment.

The husband's application to set aside the original orders was dismissed.

The husband then filed an application for leave to appeal to the Full Court of the Family Court of Australia which was heard on 12 November 2014. At this hearing the wife put forward evidence from her brother who was the executor of her father's Will.

Her brother's evidence was that neither the annual payment of \$150,000 nor the payment of \$16,500,000 had to be paid to the wife, and that as executor of the Will, he had no obligation to her in respect to payment of that money. The Full Court set aside the orders dismissing the husband's application and found that there was evidence before the court which demonstrated that the wife was able to support herself adequately.

Hall v Hall ends up in the High Court of Australia

Matters brought to the High Court generally require special leave to proceed. With special leave, the wife appealed the Full Court's decision to the High Court of Australia alleging failure of process and errors of substantive reasoning.

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The majority of the High Court held that the finding of the Full Court (that the wife would have received the annual payment of \$150,000 had she asked her brothers for it) was a finding open to the court to make. Further, the High Court went on to say that the wife's brothers were under a moral obligation to honour their late father's wish with respect to both payments to the wife that he had referred to in his Will. There was no evidence to suggest that the wife's brothers might not fulfill that moral obligation. The basis of

these findings demonstrated that the wife was able to support herself adequately and that the threshold requirement of s.72(1) of the Act was not met.

The High Court said at paragraphs 52 and 53 that:

“the wording of s 72(1), it has been noted, seems to imply that each party should attempt to support himself or herself where that is reasonable having regard to the matters referred to in s 75(2). The matters referred to in s 75(2)(b) are matters which bear on the practical ability of one party to support the other, and of the other party to support himself or herself. Hence the concluding reference is to the matter of “the physical and mental capacity of each of them for appropriate gainful employment”. Hence also the opening reference to the matter of “the income, property and financial resources of each of the parties” cannot be confined to the present legal entitlements of the parties.”

In the marriage of *Kelly and Kelly (No 2)* (1981) FLC 91-108, financial resources in the context of s.75(2)(b) of the Act is reference to “a source of financial support which a party can reasonably expect will be available to him or her to supply a financial need or deficiency.”

In this case, the High Court of Australia noted the Full Court's finding of fact, being that the annual payment of \$150,000 was a financial resource of the wife and therefore a matter within s.75(2)(b). The High Court also found that the availability of the annual payment to the wife was a fact or circumstance which bore directly on the ability of the wife to support herself adequately.

The High Court held that the appeal by the wife should be dismissed with the husband's costs of the appeal to be paid by the wife.

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