SUPREME COURT OF QUEENSLAND

CITATION:	*FLC v AJO (No 2)* [2013] QSC 103
PARTIES:	**FLC** (applicant) **v** **AJO** (first respondent) **AJO as trustee** (second respondent)
FILE NO/S:	31 of 2006
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court, Cairns
DELIVERED ON:	23 April 2013
DELIVERED AT:	Cairns
HEARING DATE:	26, 27 July 2012, 7, 8 November 2012, 10, 11 December 2012
JUDGE:	Henry J
ORDER:	**1. The respondent pay to the applicant the sum of $7,735.30 by way of property adjustment pursuant to Pt 19 *Property Law Act 1974* (Qld).** **2. That amount is to be paid by 23 July 2013.** **3. If the respondent fails to make the payment in full referred to in order 1, unless the parties agree otherwise in writing, the property situated at Edgar St, Bungalow, described as Lot 35 on Registered Plan 709521, County of Nares, Parish of Cairns, Title Reference 20374115 ("the property") is to vest in a trustee to be agreed by the parties, or, failing agreement, a trustee nominated by the President of the Queensland Law Society, to sell the property.** **4. The trustee shall distribute from the net proceeds of sale the costs of the trustee, $7,735.30 to the applicant and the balance to the respondent.** **5. Pending the payment referred to in order 1, the respondent is restrained from encumbering the property**

without the written consent of the applicant, other than for the purpose of raising sufficient money to make the payment.

6. The parties otherwise retain their respective real and personal property free of all claims from each other.

7. Liberty to apply on the giving of two days notice in writing on the form of order and as to costs.

CATCHWORDS: FAMILY LAW AND CHILD WELFARE - DE FACTO RELATIONSHIPS – ADJUSTMENT OF PROPERTY INTERESTS – GENERALLY - where the applicant seeks a Property Adjustment Order pursuant to Part 19 of the *Property Law Act* 1974 (Qld) – where there was a lengthy de facto relationship – where the respondent made substantial contributions to the pool of assets during the relationship – where the applicant claims that he also made substantial financial and non-financial contributions during the relationship - consideration of the matters relevant to deciding what is just and equitable in making the property adjustment order

Acts Interpretations Act 1954 (Qld)

Child Support (Assessment) Act 1989 (Cth)

Property Law Act 1974 (Qld) Pt 19

Challen v Challen [2007] Fam CA 1292

FO V HAF [2006] QCA 555

COUNSEL: Applicant for himself

First Respondent for herself and the Second Respondent

SOLICITORS: -

[1] The applicant applies for a property adjustment order against the respondents under Pt 19 of the *Property Law Act* 1974 (Qld) ("*PLA*").[1]

[2] Threshold issues in this application were whether there has been a de facto relationship and whether leave should be given for the application to proceed if it was brought out of time.

[3] Those issues were considered in a preliminary hearing at which I determined the parties had been in a de facto relationship from some time in the early to mid 1980's

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[1] The second named respondent was included incorrectly. References herein to the respondent are references to the first respondent.

until early 2002.[2] This meant that the applicant's application for a property adjustment order was out of time because it had not been made within two years of the relationship ending,[3] as required by s 288 of the *PLA*. However I granted leave for the application to proceed out of time on the basis that hardship would result to the applicant if leave was refused. In granting leave I found the applicant's application would probably succeed, albeit only to the extent of achieving a minority percentage of the property pool. However I emphasised my finding as to his prospects was solely for the purpose of considering the granting of leave to proceed and that the determination of the application for a property adjustment order would depend entirely upon the evidence adduced at the substantive hearing.[4]

[4] The main purpose of Pt 19 of the *PLA* is to facilitate a just and equitable property distribution between de facto partners at the end of a relationship. To ensure a just and equitable division of property occurs, the court must consider the factors contained in subsubdivisions 3 and 4 of subdivision 2 Pt 19 of the *PLA*.

[5] It is generally recognised that the four step approach to be adopted in making a property adjustment order under Pt 19 of the *PLA*, as outlined by Keane JA in *FO v HAF*,[5] requires:

1. the identification and valuation of the property, resources and liabilities of the parties;
2. the identification and assessment of the contribution of the parties to their pool of assets and the determination of their contribution-based entitlements in accordance with s 291 to 295 *PLA*;
3. the identification and assessment of the factors contained in s 297 to s 309 of the *PLA* to determine the adjustment to the contribution-based entitlement;
4. consideration of the result of these earlier steps to determine whether the result is just and equitable in accordance with s 286 of the *PLA*.

[6] Proper consideration of those steps first requires some preliminary consideration of the history of the relationship as well as the parties' credibility.

Background

[7] The applicant was born in 1954 and the respondent in 1959.

[8] Their relationship commenced some time in the early to mid 1980's and ended early in 2002.

[9] During that time the parties raised five children. The respondent had a daughter, in July 1982, at the time the parties first commenced their relationship. The parties had 4 children of their own; a son, LC, born April 1986, and three daughters, ZC, born December 1988, AO, born October 1991 and JC, born September 1994. An acrimonious relationship now exists within the former family. The son has sided with the father and the daughters have sided with the mother. The evidence of each member of those camps was obviously clouded to varying degrees by emotional influences.

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2 *FLC v AJO* [2012] QSC 21.
3 Ibid, [57].
4 Ibid.
5 [2006] QCA 555, [52].

Hope St, Cooktown

[10] During their relationship the parties resided at a number of properties with their children.

[11] The first of these properties was the respondent's property at Hope St in Cooktown, which was purchased by the respondent in February 1984 for $20,000, utilising a $15,000 bank loan secured by mortgage.[6] The applicant gave evidence that during this time the property was refurbished and that approximately 12 months after the refurbishment the parties left the property, moving to Cairns.[7] The Hope St property was then rented out.[8] According to the respondent, the rental income derived from the property was used to repay the mortgage on the property and then later to pay rates on property purchased in Kuranda.[9]

Stewart St, Edmonton

[12] In about 1987, the respondent was gifted a share in vacant land at Stewart St in Edmonton.[10] The respondent built a house on this land using a $15,000 bank loan.[11] The property was then sold in 1988 for approximately $110,000.[12]

Southerden Dr, City View

[13] In about 1989 the proceeds received from the sale of the Stewart St property were used by the respondent to purchase vacant land at Southerden Dr in City View[13] for $60,000.[14] In about 1991 a house was built on the land for a cost of $90,000.[15] The remaining $50,000 from the sale of the Stewart St property was used to fund the building,[16] along with a $40,000 bank loan secured by mortgage.[17] The parties resided at this property for about 12 months after the house was built.[18] In around 1993 the property was sold for between $232,000 and $250,000.[19] The respondent claims that a portion of the proceeds from the sale was used to repay the $40,000 mortgage.[20]

Crothers Rd, Kuranda

[14] In about 1993, funds from the sale of the property at Southerden Dr, together with vendor finance of $10,000, were used to purchase a property at Crothers Rd in Kuranda for $167,000.[21] This property was purchased under a trust instrument with

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6 Ex 42, Ex 57.
7 Ex 8A.
8 Ex 8A, Ex 42.
9 Ex 15[1] [xviii].
10 Ex 42, Ex 57.
11 Ibid.
12 Ibid.
13 Ex 8A [46], Ex 42, Ex 57.
14 Ex 42, Ex 57.
15 Ibid.
16 Ex 8A [46], Ex 42, Ex 57.
17 Ex 42, Ex 57.
18 Ex 8A [47].
19 Ex 8A [49], Ex 57.
20 Ex 57.
21 Ex 8A [50], Ex 42, Ex 57.

the parties' four children listed as beneficiaries.[22] The respondent held the property as trustee.[23]

[15] According to the applicant, he commenced building a shed on the property at Kuranda for the parties to live in with the children until a main residence could be constructed.[24] The applicant claims that once he erected the shed, he commenced building the main residence on the property.[25]

Severin St, Cairns

[16] The respondent left the Kuranda property in about 1995.[26] At this time a property was purchased in the respondent's name at Severin St in Cairns.[27] According to the respondent, the purchase price was approximately $160,000 and funding for the purchase was obtained through a $110,000 loan from the Bank of Queensland, savings of $10,000, a $30,000 gift from the respondent's father before he died and $15,000 being a repaid loan from her mother.[28] A note to the applicant from her father was tendered in support of her evidence.[29] The applicant claims that he provided money gifted from his father in the amount of $45,000[30] or $50,000[31] as a deposit for the purchase of this property but I do not accept that evidence. It was unsupported by any records notwithstanding that the applicant claimed in cross examination that such money would have come from money he had earlier received and banked.

[17] The respondent deposed that she "gifted Hope St Cooktown property to [C] family trust to enable the purchase" of the Severin St property,[32] which "was purchased in a discretionary trust with [her] ATF the [C] Family Trust".[33] Inconsistently with that evidence, yet in the same affidavit, the respondent deposed the eventual proceeds of sale of the Cooktown property "were used for [the] purchase of Edgar St Bungalow, which was purchased solely in the name of" the respondent.[34] It is difficult to see how the respondent could have used the proceeds in that way if they were truly the proceeds of sale of a trust property. Further, according to that affidavit, the trust deed was annexed to it, but the affidavit was tendered without any annexures attached. In her later evidence it was apparent there was no substance to her assertions the Severin St property, or for that matter the Edgar St property, were held on trust.[35] In the circumstances I do not accept the Severin St property is held on trust.

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22 Ex 8I [10].
23 T1-15.
24 Ex 8A [51]-[52].
25 Ibid, [52].
26 Ex 25.
27 Ex 57.
28 Ex 42, Ex 57.
29 Ex 73, T5-89 l51, T6-3 l1, T6-5 l5.
30 Ex 8A [14].
31 Ex 8G [3].
32 Ex 42 p4 Property purchases/funding.
33 Ex 42 p2 Schedule of assets and liabilities, T5-51 l58.
34 Ibid.
35 T6-15-20.

Edgar St, Bungalow

[18] In 2004 the property at Hope St, Cooktown was sold for $180,000 and the proceeds were used to purchase an uninhabitable house at Edgar St, Bungalow in the respondent's name for $170,000. Loans of $100,000 in 2004, $60,000 or $70,000 in 2005 and $90,000 or $100,000 in 2006. Some of those funds were obtained to fund renovation work at the Edgar St property yet it allegedly remains uninhabitable upstairs.[36]

Work and child care

[19] The applicant was not in consistent employment during the relationship[37] and appears to have ceased regular paid work at the time the parties moved into the Kuranda property.[38] His paid employment included working as a delivery driver for Malanda Milk,[39] a concrete pumper, boom operator and finisher, and a maintenance contractor. He worked for CSR Sugar at Hambledon Mill in Edmonton[40] and worked in Western Australia on the family farms for 12 months.[41] The applicant claims that upon his return to Queensland from Western Australia he commenced building the main residence at the Kuranda property. He states that during this time he earned an income working for unspecified "others".[42]

[20] The applicant does not dispute the respondent's evidence that she also worked throughout the relationship.[43] However it appears this did not occur when the children were very young. The respondent's eldest daughter deposed that in about 1995 the respondent was able to return to nursing because the three children were going to school and the baby could be put into day care.[44] This roughly accords with the respondent's move to the Severin St property.

[21] Evidence given by the witnesses indicated that the Severin St property was purchased so that the parties' children could live in Cairns with the respondent and attend school and participate in extracurricular activities.[45] Following the purchase of the Severin St property, the applicant stayed at the Kuranda property and came down to Cairns on the weekend to visit the children and help the respondent with the house.[46] The children would also visit the applicant on the weekends.[47] Keith Masatto gave evidence that at this time the respondent told him that the applicant was living in the Kuranda property with the children one week on, one week off.[48]

[22] In the early years of the relationship the applicant was the family's primary source of regular income, whilst the respondent took on the role of homemaker and carer for the parties' children. However towards the latter years of the relationship the

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36 Ex 42, Ex 57, Ex 59 p2.
37 Ex 4, Ex 5, Allan Johnston.
38 Ex 4, Ex 5, Ex 8I [3].
39 Ex 8A [10].
40 Ex 15.
41 Ex 8I [3].
42 Ibid.
43 Ex 8A [11].
44 Ex 42.
45 Eg. Ex 2.
46 Ex 1, Ex 2.
47 Ex 4, Ex 5, Allan Johnston [5].
48 Ex 6 [10].

respondent had returned to work as a nurse and the applicant had ceased full time paid work in order to build the main residence at the Kuranda property.

[23] The applicant concedes that the respondent spent more time caring for their children and taking on the role as homemaker because she was not working.[49] However the applicant also claims that he contributed equally to the welfare of the family when he was not working throughout the relationship.[50]

Separation early 2002

[24] In the preliminary hearing, limited direct evidence was put forward by the parties in relation to when the relationship ended. I found it was likely the de facto relationship persisted for some years after the respondent moved to the Severin St property. I concluded that the existence of a de facto relationship between the respondent and a Mr W at Severin St for at least a year from 2002 into 2003 presented as powerful evidence that the respondent and applicant were by this time no longer in a relationship. I ultimately concluded that the de facto relationship between the applicant and the respondent ended in early 2002, around the time the respondent commenced her relationship with Mr W.

Events following the parties separation in 2002

[25] Following the parties' separation it appears that the parties' children would spend time with both the applicant and the respondent. The applicant claims that their son, LC was living with him and his two daughters AO and ZC were living with the respondent, whilst the parties' youngest daughter, JC shared time between both parties.[51] LC deposed that JC initially shared time between the applicant and the respondent.[52]

[26] As already mentioned subsequent to the separation, the respondent in 2004 sold the property at Hope St in Cooktown and purchased the property at Edgar St in Bungalow.

[27] Following the separation the respondent worked as a carer in the community.[53] She worked for one care agency[54] on a casual basis from 2005 through to the date of this hearing, as well as another care agency from 2008 through to the date of this hearing.[55] Pay slips from the former agency were provided and date back to 2010.

[28] The applicant gave evidence that in 2005 he established a machine operations business[56] and claims to have obtained a business number for the business on or around 2004/2005[57] or 2006/2007.[58] According to the applicant he had various types of machinery including a concrete pump, a backhoe, a bob cat, a bulldozer and

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49 Ex 8A [16].
50 Ibid [10].
51 Ex 8A [26]-[27].
52 Ex 2 [10].
53 Ex 42.
54 Ibid.
55 Ex 57.
56 Ex 8A.
57 T2-15.
58 T1-81.

various trucks[59] and he would drive this machinery for different people for varying lengths of time or sometimes just as a fill-in. The applicant states that the business was quite busy for a while[60] and that he was earning approximately $1,000 a week from this machinery business until early 2006 when the business declined[61] and he was only getting odd jobs.

[29] Subsequent to the separation the applicant received a distribution from his father's estate of almost $320,000. Evidence given by the applicant's sister, the executor of the estate, was that the estate was distributed in 2005.[62] A letter sent to the applicant from solicitors R E Purvis & Co on 26 July 2005 advised the firm was making an interim distribution of $319,250 to the applicant and attached a cheque in that amount.[63] The applicant gifted and spent that money on motor vehicles, breast implants, legal fees of $77,000 and, as he put it, "squandered the rest".[64]

Credibility, reliability and proof

[30] It is clear that an acrimonious relationship exists between the applicant and respondent. The applicant's son has sided with the applicant while the daughters largely favour the respondent. It was obvious that much of the evidence given by these witnesses at the hearing was clouded by emotional influences.

[31] The applicant and respondent were not particularly credible witnesses. Each obviously tended to exaggerate their own contributions in the relationship and to diminish the true worth of the contributions of the other.

[32] The respondent had a better knowledge of the financial history of the relationship than the applicant, who was obviously frustrated by his inability to find and advance more detailed financial evidence. However the applicant also tended to use this and the deleterious effects of long delay and an alleged theft of her records by the applicant and LC[65] upon the inaccessibility of records to his advantage, making significant assertions about the extent and worth of his contributions that were difficult to test in the absence of supporting detail. The respondent alleged many of her financial records had been stolen from her shed at the Edgar St property,[66] but nonetheless she appeared at times to be selective when it suited her about the extent of her knowledge of financial matters. As between the two of them the applicant was the vaguest and most unconvincing about their financial contributions.

[33] The respondent's reluctance generally to make reasonable concessions in the applicant's favour was exemplified by her assertion the applicant's only financial and non-financial contribution had been the building of sheds at the Kuranda and Stewart St properties[67] and her obvious reluctance to concede there had been a de facto relationship of substantial duration.[68] The applicant was not always candid about matters likely to be adverse to his interests either. This was starkly illustrated

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59 T1-81.
60 T2-11.
61 T2-15.
62 T2-3 [3].
63 Ex 14.
64 T2-14, T2-18.
65 Eg. T4-62 l18, Ex 47, T5-6 l50.
66 Ex 42 [34].
67 Ex 15 [1.iii].
68 Ibid [i].

when the applicant, who lays claim to significant physical disability, was caught out by video evidence of his recent apparently unimpeded ability to ride a trail bike in the bush.[69]

[34] In the upshot I was left generally reluctant to accept the evidence of either party about contentious matters at face value.

[35] While there was evidence adduced from an array of witnesses other than the applicant and respondent the evidence of most of those witnesses had limited relevance and tended to be general rather than specific information. A lot of irrelevant, hearsay and opinion evidence was included in the affidavits tendered in the proceeding. This may in part have been because the parties were self represented and unaware of the rules of evidence although some of it was likely driven by animosity. Given the breadth of that problem in a proceeding in which I was unassisted by legal representatives at the bar table I did not delay what already loomed as a lengthy proceeding by encouraging admissibility objections and rulings at the time of tender. I have simply disregarded such inadmissible evidence as was lead by the parties.

[36] A further, more significant problem with the state of evidence was the disorganised, incomplete and imprecise evidence of financial matters, particularly the parties' financial contributions and the financial worth of non-financial contributions to their property and resources. As a consequence a detailed, asset by asset approach to considering the parties contributions was rendered impracticable if not impossible. Ultimately the state of evidence favoured the taking of a more global approach.

Step One: Identification and valuation of the property pool at the date of the hearing

[37] The task of identifying and valuing the property pool is particularly difficult given the lack of precision in the evidence led on the topic.

[38] The applicant's financial disclosure from 2008 to 2011 indicates that he has no interest in any land, shares, investments, superannuation, trusts or partnerships, but shows that at the time of disclosure he had $1,774 in a Commonwealth Bank savings account, a motor vehicle, two unregistered motorbikes, as well as goods and chattels.[70]

[39] The respondent owns the properties at Severin St and Edgar St, a motor vehicle and goods and chattels.

[40] Each party disputes the accuracy of the estimated value of vehicles owned by them. It was obvious their estimates of the worth of their personal property were of dubious accuracy but it was not inherently implausible and was ultimately the best evidence available to me.

[41] Neither party deposed to any material liabilities such as personal loans or credit card debts. In the present context the only material liabilities are the respondent's loans secured by mortgages over the Severin St property.

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69 Ex [16].

70 Ex 8I [17].

[42] The respondent's schedule of assets and liabilities in 2007 showed the Severin St property to be worth approximately $400,000 with a liability of $323,945 and the Edgar St property to be worth $250,000 with no liability.[71] Her most recent schedule, sworn 10 May 2012, put the same valuations on the properties but in reverse.[72] While the applicant did not materially challenge the valuations, I infer the reversal of the two valuation figures was a typographical error.[73] On the whole of the evidence it is readily apparent that the Severin St property would be worth more than the Edgar St property. I will proceed on the basis the Severin St property is valued at $400,000 and the Edgar St property is valued at $250,000. The most recent schedule listed liabilities under mortgages in respect of the Severin St property, of $242,306.47 and $220,825.62, a total liability of $463,132.09 for a property apparently worth $400,000.

[43] The effective elimination of the respondent's equity in the Severin St property on one view reduced the value of the property pool. It is likely that at least some of the borrowed money was expended on the Edgar St property, which also forms part of the asset pool. The general principle is that the Court considers the property of the parties at trial as it finds it. However the value of dissipated assets can be added back to the worth of the property pool. A so-called "add back" may occur.

> *"where one party has embarked upon a course of conduct designed to reduce or minimise the effective value or worth of matrimonial assets; or where one of the parties has acted recklessly, negligently or wantonly with the property of the relationship, the effect of which has reduced or minimised their value or the pool of assets."*[74]

[44] While the elimination of the equity in the Severin St property warranted scrutiny, there was no evidence that the loans secured against the property were taken out unreasonably or as part of a course of conduct to reduce the worth of assets in which the applicant might potentially share.

[45] Both parties have acknowledged that the Kuranda property was purchased under a trust instrument and placed on trust for four of their children as beneficiaries. However, the applicant claims that there was an oral agreement he would retain the Kuranda property during his life and the respondent would retain the Severin St property.[75] I do not accept there was such an agreement. The applicant may well have wanted to impose such an arrangement and may even have mistakenly believed from the respondent's initial lack of action in removing the applicant from the Kuranda property that she was acquiescing to his continued presence there. However on the whole of the evidence it is inherently unlikely the respondent, who was the trustee owner of the Kuranda property, would have agreed to allow the applicant to remain there for life and thereby deprive her own children of their beneficial interest in the property, potentially for decades.

[46] I accept there was some form of oral agreement about the applicant being permitted to remain on the property. That much is apparent from the respondent's solicitor referring in correspondence to her having permitted the applicant to reside at the

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71 Ex 42.
72 Ex 58.
73 This was confirmed in addresses T6-38 l40.
74 *Challen v Challen* [2007] Fam CA 1292 [72]-[74].
75 Ex 8F [2], Ex 8G [5].

premises "under a verbal licence".[76] It is likely that the respondent acquiesced to maintaining the residential status quo for some time after separation because the respondent was hesitant to force matters to a head and because the applicant had told her he would leave after receiving the inheritance he expected on the death of his parents.[77] She was well aware that the applicant had no right to possession of the Kuranda property and that in the long run she could evict him from it.

[47] In any event, the Kuranda property is not an asset or liability of either party and cannot be included in the property pool.

[48] The applicant deposed to a belief that the respondent has been receiving rental income from the Kuranda property[78] but no evidentiary foundation was advanced for the belief. It is irrelevant in any event. If such rent were received it would be trust property and not part of the property pool.

[49] The applicant also deposed to a belief that the respondent has been receiving rental income from the Severin and Edgar St properties[79] but again no evidence or substance was advanced.

[50] The schedule of assets and liabilities is therefore as follows:

Real Property	**Current Value**
Respondent's Severin St property	$400,000.00
Respondent's Edgar St property	$250,000.00
Liabilities in Relation to Real Properties	
Respondent's Mortgage re Severin St	-$242,306.47
Respondent's Mortgage re Severin St	-$220,825.62
Net Value of Real Property Interests	**$186, 867.91**
Other Financial Assets	
Respondent's Bank Account	$10.00
Applicant's Bank Account	$1,174.00
Respondent's Superannuation	$36,763.07
Sub Total	**$37,947.07**
Motor Vehicles	
Respondent's Daihatsu Applause	$150.00
Applicant's Motor Vehicle	$10,008.00
Applicant's Two Motor Bikes	$2,800.00
Sub Total	**$12,958.00**
Goods and Chattels	
Respondent's furniture, clothing, shoes & electrical goods	$1,900.00
Applicant's goods and chattels	$2,500.00
Sub Total	**$4,400.00**
TOTAL	**$242,172.98**

The applicant's $16,482 worth of assets equates to 6.8 per cent of the property pool.

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76 Ex 8G [5], Ex 62.
77 Ex 42 [21].
78 Ex 8E [2].
79 Ex 8A [63].

Step Two: The identification and assessment of contributions applying subsubdivision 3 factors

Contributions to property or financial resources

[51] Section 291 requires the court to consider the financial and non-financial contributions made by or for the parties to the acquisition, conservation or improvement of any property held by either or both parties and to the financial resources of either or both of the parties.[80]

[52] Section 291 provides it does not matter whether the property or resources still belong to the parties. However that does not make all contributions made throughout the relationship equally important. The weight to be given to such contributions will inevitably vary depending on the circumstances of the case.

[53] Firstly, considering contributions to financial resources, the parties each earned income in the course of their de facto relationship and it is reasonable to infer their income contributed to their financial resources. Although the applicant had earlier been the primary breadwinner for the family, he claims that the respondent was in control of the family finances and as a result he is not clear on how their funds were used.[81]

[54] The applicant deposed to having "made financial contributions to the upkeep of the family … on a daily and weekly basis over the years".[82] The respondent disputes this. Her daughter AO witnessed her mother make unsuccessful requests to the applicant for money to meet the family's financial burdens.[83]

[55] The applicant also deposed to having paid the rates on the Kuranda property for 12 years to 2004 but cannot retrieve evidence he did so.[84] The respondent's evidence that she paid for rates, utilities and outgoings on the various properties was more convincing and found general support in the various receipts and other documents exhibited by her.[85]

[56] The applicant's sister deposed that the applicant's father would regularly help the family financially.[86] The applicant asserted that during the last 10 years of the relationship he received approximately $20,000 a year in varying amounts from his father.[87] He deposed the money was used to pay family bills, construction and that $45,000 of the money contributed to the deposit on the purchase of the Severin St property.[88] At trial the applicant said he funded the purchase of his vehicles in part using money from his father.[89] The respondent denies this evidence.

[57] The evidence of the sister of the applicant on the topic is general and provides no detail capable of being tested. The applicant's evidence is similarly unspecific,

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80 There is no evidence of contributions by the children of a kind that might be relevant to s 291.
81 Ex 8A[1].
82 Ex 8D [6].
83 Ex 25 [17].
84 Ex 8E [4].
85 Ex 43.
86 Ex 3 [4], [11].
87 Ex 8A [14].
88 Ex 8A [14], 8D [4].
89 T1-90 l47.

notwithstanding that he would likely have some specific recall of the detail of his receipt and expenditure of some of these significant payments. The applicant kept no record of the alleged payments.[90] He claimed he banked "a lot" of the money received.[91] While I accept the applicant's father may from time to time have paid the applicant money in large amounts I do not accept that money was expended in any significant way upon the property, resources or family of the parties. No evidence such as bank records was adduced to show the movement or expenditure of such monies.

[58] Overall the evidence supports the conclusion that the respondent made a materially more substantial contribution to the financial resources of the parties during the relationship.

[59] Turning to the contributions to property, both parties made a deliberate choice to forego their beneficial interest in the Kuranda property, a property to which they made some of the most significant direct and indirect contributions of their relationship. Before considering those contributions, it is useful to consider the financial and non-financial contributions of the parties to property which does still belong to the parties.

[60] The total values of the applicant's and respondent's financial assets other than real estate, motor vehicles and goods and chattels are $16,482 and $38,823.07 respectively. There is no evidence to suggest either of them made a material contribution to those assets of the other. What though of the real estate held by the respondent?

[61] The respondent's Severin St property, valued at $400,000, has a mortgage in excess of its value by $63,132.09. The respondent's Edgar St property is valued at $250,000 and is unencumbered.

[62] I have already found that any financial contribution by the parties to the initial purchase of the Severin St property was by the respondent only. She subsequently made a significant contribution to the renovation of the premises.[92] As to mortgage payments she deposes that she made them[93] and there is no credible evidence to suggest the applicant made any contribution.

[63] Did the applicant make any non-financial contributions to the Severin St property? Setting aside the evidence I have rejected about his contribution to the purchase price from money from his father, the applicant deposes that in 1998 and 1999 he made various contributions to the renovation and improvement of the property to the value of $20,700 and contributed 40 weeks at 50 hours per week.[94] That estimate of time worked is obviously excessive. On the whole of the evidence it appears the applicant was never present at the Severin St property for such prolonged periods as to have been able to work 2,000 hours there in 1998 and 1999.

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90 T1-91 l20.
91 T1-92 l12.
92 Corroborated for example by Ex 26, 31, 34, 36.
93 Ex 43 [5].
94 Ex 10A [60]-[61].

[64] The respondent denies the applicant did any work at the property. Her daughter AO, whose evidence was generally credible, supports the respondent's position that most of the building work at Severin St was performed by Mr Carey, a builder.[95]

[65] There was evidence corroborating that the applicant did at least do some work at the Severin St property.[96] However none of that evidence suggested his contribution was as extensive as asserted by him or allowed the Court to make an objective assessment of the true extent of the applicant's contributions or their objective worth. His contribution to the worth of the Severin St property was minor in comparison to the contribution of the respondent.

[66] As to the Edgar St property, it was purchased by the respondent with the proceeds of sale of the property in Hope St, Cooktown. She paid for renovation work to it with loan money secured against the Severin St property. The applicant's contribution to the worth of the Hope St property and thus the purchase monies for the Edgar St property was minor.

[67] The respondent had acquired the Hope St property for $20,000 prior to the commencement of the relationship with the aid of a bank loan for $15,000 secured by mortgage. The respondent paid off that loan, using rent money received in the time after the parties had moved.

[68] The applicant contends he contributed indirectly to the value of the Hope St property by the work he performed there while in occupation.[97] He deposed to refurbishing, restoring and restumping the house as well as installing a new kitchen, bedrooms, bathrooms and ceilings. He also claims to have tended to general maintenance of the property, both during the period of occupation and subsequently when he and the respondent occasionally travelled to Cooktown to tend to the property's upkeep and management.[98] Photographs tendered by the applicant corroborated his assertion he did some work at the property.[99] So too did the evidence of a friend of his, Mr Johnston.[100] Another friend Mr Witheridge, deposed to both parties doing renovation work on the property.[101] However neither the photographs or indeed any evidence advanced by or for the applicant informed the court, or allowed the court to draw an informed inference as to the value of his work on the property. In any event, it is likely the value of his contributions to the Hope St property, which was sold to purchase the Edgar St property, was minor in comparison to the respondent's.

[69] The applicant's contributions to the Edgar St property after its purchase were negligible, at best, for him. He deposed to working 40 hours a week there for three weeks, performing general maintenance, repairs and work preparatory to the property's refurbishment.[102] The respondent denies this occurred.[103]There is no corroboration of him having performed work other than gardening.[104] His only

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95 Ex 25.
96 Eg. Mr Johnston T1-30, Ex 8C and 8G photographs.
97 Ex 8A [40]-[41].
98 Ibid, [42].
99 Ex 8C, 8G.
100 Ex 4, T1-32 l18.
101 Ex 7 [5].
102 Ex 8A [64].
103 Ex 42 [30].
104 T1-34 l4.

material, albeit minor contribution to the worth of the Edgar St property was indirect, by reason of his minor contribution to the worth of the Hope St property, the sale of which helped fund the acquisition of the Edgar St property.

[70] The applicant's financial and non-financial contributions to the respondent's two real estate properties which are in the property pool were therefore minor, with the contributions to the Severin St property being the most significant. The combined value of his financial and non-financial contributions to those properties as a percentage of the overall financial and non-financial contributions of both parties to those properties is unlikely to have exceeded five per cent.

[71] What then of the financial and non-financial contributions of the parties to property and financial resources no longer held by them?

[72] At the commencement of the relationship the applicant had few assets, apart from personal possessions and a motor vehicle.[105] The respondent had a property at Hope St in Cooktown, some personal possessions and a motor vehicle.[106]

[73] I have already dealt with contributions to the Hope St property.

[74] The property acquired next in time was at Stewart St in Edmonton. That property was gifted as vacant land to the respondent and she built a house using a $15,000 bank loan.[107] The respondent deposed to paying the mortgage repayments[108] and there is no persuasive evidence the applicant contributed to them. The applicant claimed to have performed work on the property. He deposed:

> "I built a shed on this property and worked as a builders labourer and offsider to employ contractors on the property. I contributed considerable finances for the contracted payments for the building of the house on the property."[109]

[75] Photographic evidence confirms he performed some work and that the shed was a building of some substance.[110] However his evidence again lacks sufficient detail to allow an informed inference to be drawn as to the value of his work. It is likely his contribution was very minor in comparison to the respondent's.

[76] The proceeds received from the sale of the Stewart St property were used to purchase vacant land at Southerden Dr in City View and a house was built on that land with the assistance of a $40,000 bank loan. The respondent arranged for the building and other work to occur.[111] She also deposed to paying the mortgage repayments[112] and there is no evidence the applicant contributed to them. They each claimed to have paid rates on the property.[113] The applicant deposed to contributing by working on the property:

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105 Ex 8A sch 1.
106 Ex 8A sch 2.
107 Ex 42, Ex 57.
108 Ex 43 [5].
109 Ex 8A [44].
110 Ex 8C, 8G.
111 Eg. T4-21 l30-52, T4-67 l28, Ex 52.
112 Ex 43 [5].
113 Eg. T4-87 l36.

> "[The respondent] was owner/builder and I contributed to the property by labouring with contracted builders. I finished off the residence by doing all landscaping and installation of a pool."[114]

[77] Photographs were exhibited by him.[115] However again he provided insufficient detail to enable an assessment of the true worth of his contribution. It is likely that his contribution was negligible in comparison to the respondent's.

[78] The Kuranda property was purchased for $167,000 using the sale proceeds of the Southerden Dr property aided by vendor finance of $10,000. In contrast to his evidence regarding the earlier properties, the applicant deposed in much greater detail to his contribution to this property. He said he built a shed on the property and then built a residence there, incorporating the original two bedroom residence which he described as run down and similar to a donga.[116] He claimed his non-financial contribution to the property involved him working for 24 weeks building the shed in 1994, working for 120 weeks at 35 hours per week building the house during 1995 to 1998 and working for 280 weeks at 10 hours per week finishing the house during 1998 to 2005 (the separation was in early 2002).[117] He deposed that while some contracted labour was used, he built 80 per cent of the property.[118] The respondent disputes this.[119] The applicant asserted his non-financial contribution to the property equalled $120,000.[120] He listed his estimated financial contributions towards various aspects of the building work. Those contributions total $152,700 whereas he estimates the respondent's financial contribution to the building work was $13,000.[121]

[79] His son deposed to his father putting "heaps of effort and money into the making of our home".[122] Other witnesses and photographic evidence provided similar general corroboration of the applicant having contributed significantly to building and development on the Kuranda property.[123] Some miscellaneous documentary records such as receipts quotations were exhibited but some are in the name of the respondent and some in the name of the applicant. They shed no light on who made payments for the relevant goods or services.[124]

[80] The respondent completed an owner builder's course to perform work on the Kuranda property and on her account she spent the first six months on the property renovating the existing building.[125] She deposed to budgeting $60,000 for the building work and spending $72,000 on building work and furnishings.[126] Her evidence implied that once she left the property little further significant building work was done.[127]

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114 Ex 8A [47], Ex 8B [10].
115 Ex 8C, 8G.
116 Ex 8A [51], [52], [56].
117 Ibid, [56].
118 Ex 8A [54].
119 Ex 42 p14 [3].
120 Ex 8D.
121 Ex 8A [55].
122 Ex 2 [3].
123 Eg. Mr Witheridge Ex 7 [3], Mr Sutherst Ex 11 [3], [4], photographs exhibited to Ex 8C and Ex 8G.
124 Ex 8G.
125 Ex 42 [17].
126 Ex 42 p14.
127 Ibid.

[81] As already mentioned the Kuranda property is not part of the property pool. It is trust property and the beneficiaries are the parties' children. Are the contributions of the parties to it contributions within the meaning of subsubdivision 3? They are not homemaking or parenting contributions. They are not contributions to family welfare under s 292. Rather they are contributions to property or financial resources and thus contributions of a character with which s 291 is concerned.

[82] Section 291(1) relevantly provides:

> "The court must consider the financial and non-financial contributions made directly or indirectly by or for the de facto partners or a child of the de facto partners to -
>
> (a) the acquisition, conservation or improvement of any of the property of either or both of the de facto partners…"

[83] Section 291(1) is worded very broadly and includes contributions "made directly or indirectly...for…a child of the de facto partners".

[84] The children were the beneficiaries of the trust upon which the Kuranda property was held from which it follows the plaintiff's alleged contributions to that property were "for" the children. However the effect of s 291(1)(a) is to also require that the contributions be to "the property of either or both of the defacto partners". The respondent held the Kuranda property on trust but she was nonetheless the lawful owner of the property and held a legal interest in it. Section 36 of the *Acts Interpretations Act* 1954 (Qld) relevantly provides, "**property** means any legal … interest … in real … property …". In the circumstances, the Kuranda property was within the meaning of s 291(1)(a), "the property of" one of the defacto partners, namely the respondent.

[85] The words of s 291(1) are sufficiently broad to include the alleged financial and non-financial contributions made to the Kuranda property by either the plaintiff or respondent, notwithstanding that the property was only owned by one of them and held on trust for the benefit of the children of the relationship. If I am wrong in that conclusion I would in any event conclude that the contributions of the parties to the Kuranda property could, if the justice of the case required it, be taken into account pursuant to s 309. The extent to which I now proceed to take them into account is not materially different to the extent to which I would otherwise take them into account pursuant to s 309.

[86] The applicant's undoubtedly significant contributions to the Kuranda property do not fall to be considered in a vacuum. The respondent contributed very significantly to the worth of the Kuranda property, particularly by raising the funds necessary to purchase the property in the first place. The purchase money was principally sourced from the sale of the Southerden Dr property, which had been purchased using funds from the sale of the Stewart St property, which had in turn been gifted to the respondent. As discussed above, the applicant only made negligible contributions to those properties.

[87] That lineage of property transactions demonstrates that the value of the parties' contributions to the Stewart St property and the Southerden Dr property was ultimately used by them to acquire and improve the Kuranda property for the

financial benefit of their children, the beneficiaries of the trust, and not to add to the asset pool of the applicant and respondent.

[88] At the time of the parties' financial and non-financial contributions to the Stewart St and Southerden Dr properties it is unlikely they would have known the benefit of those contributions would ultimately flow not to their asset pool but to property held on trust for their children. However the parties obviously made a deliberate decision by the time of the acquisition and subsequent improvement of the Kuranda property that it would be held on trust for the children.

[89] The contributions of the parties to the Stewart St, Southerden Dr and Kuranda properties ultimately gave rise to a benefit to their children, not themselves. While they are contributions to which consideration is given by me it cannot be ignored that the parties made a conscious decision to pass on the ultimate benefit of those contributions to their children. Given that mutual decision of the parties they are contributions that ought to be given less weight than the parties' other financial and non-financial contributions discussed above.

[90] In the circumstances, mainly on account of the applicant's contributions to the Stewart St, Southerden Dr and Kuranda properties, I would increase the afore-mentioned proportion of five per cent to 10 percent expressed as the applicant's proportionate contribution to the parties' overall financial and non-financial contributions to their property and resources.

Contributions to family welfare

[91] Section 292 requires the court to consider the contributions of the parties, including homemaking or parenting contributions, to the welfare of the parties and their children.[128]

[92] As already canvassed, the respondent was the primary homemaker and carer, for much of the relationship. That pattern was more entrenched when the respondent and the children were living predominantly at Severin St in Cairns. In that era, even though the respondent had returned to paid work in nursing, she spent more time than the applicant did in tending to the welfare of the children.

[93] Nonetheless the applicant did contribute to family and household tasks during the relationship including caring for the children, teaching the children, driving the children to and from school and other functions and events as well as domestic duties such as washing up, vacuuming, cleaning, mowing and shopping.[129] The respondent disputes the applicant showed any interest in the children's schooling and extra-curricular activities.[130] AO's evidence was also to the effect the respondent was disinterested in their school related activities.[131]

[94] The applicant's claim that he would often drive the children to and from school appears to be supported by evidence from witnesses. Ms Serleto deposed that after the respondent moved to Cairns the applicant took over the job of getting the

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128 There is no evidence of contributions by the children of a kind that might be relevant to s 292.
129 Ex 8A [15].
130 Ex 42 p15 [4].
131 Ex 25.

children to school on time when the children were staying with him in Kuranda.[132] Mr Johnston deposed "... [the applicant] was constantly running the kids to school from Kuranda ...'.[133] Mr Masatto also deposed that the applicant was responsible for driving the children to the bus stop when they were with him in Kuranda.[134] Mr Sutherst deposed that the applicant was constantly picking the kids up from school and running them to Cairns.[135] The applicant deposed that he would also go to the school for meetings with Sister Fay, the principal of St Joseph's as well as the children's teachers at St Joseph's.[136]

[95] Notwithstanding the evidence of the applicants involvement with the children the preponderance of evidence supports the conclusion the respondent was a more significant contributor to family welfare. I am conscious the above developed provisional apportionment percentage of 10 per cent in respect of the applicant for contributions to property and financial resources already favours the respondent. However the variation between the respective contributions of the parties to family welfare suggests there should be a modest adjustment down of that provisional apportionment percentage from 10 to eight per cent.

Effect on future earning capacity

[96] Section 293 requires consideration of any proposed order on the earning capacity of the de facto partners.

[97] In the circumstances of the present case the looming order will require the payment by the respondent to the applicant of an amount that the respondent may choose to raise by a loan secured against the Edgar St property. If it is not paid a trustee will be appointed to sell that property and make the payment from the proceeds.

[98] On balance that risk does not warrant any material variation to the provisional apportionment percentage.

Child support

[99] Section 294 requires the court to consider any child support provided or to be provided under the *Child Support (Assessment) Act* 1989 (Cth) by a de facto partner for a child of the de facto partners. This appears to be irrelevant in that the applicant has not paid child support since the separation, apparently because of his low or non-existent taxable income.

Step Three: Consideration of subsubdivision 4 matters

[100] Section 296 provides for the following matters, mentioned in subsubdivision 4, to be considered to the extent they are relevant in deciding what order adjusting interests in property is just and equitable. In the circumstances of this case some are not materially relevant.

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132 Ex 12 [5].
133 Ex 4, Ex 5 [6].
134 Ex 6.
135 Ex 11.
136 Ex 8B [18].

Age and Health (s 297)

[101] The applicant is 58 and the respondent 53.

[102] The applicant was diagnosed by Dr Bossingham with rheumatoid arthritis in 2002.[137] Dr Bossingham deposed that the applicant has widespread joint damage[138] from rheumatoid arthritis, particularly to both wrists, his right elbow and right knee. The doctor considered the applicant will increasingly develop mobility problems and likely require a total joint replacement to his right knee within five years. He considered the applicant will require appropriate treatment and monitoring and a level of domestic support if he is to remain independent into old age.

[103] The applicant also experiences lower back pain and has received treatment for it from an acupuncturist, Leo Van Gemert.[139]

Resources and employment capacity (s 298)

[104] Section 298 provides:

> "The court must consider—
>
> (a) the income, property and financial resources of each of the de facto partners; and
>
> (b) the physical and mental capacity of each of them for appropriate gainful employment."

[105] As already mentioned the applicant only deposes to holding assets worth $16,842.

[106] He has had no paid employment or taxable income in several years. That is likely due in part to the effects of his rheumatoid arthritis. However the video footage of him recently riding a trail bike suggests his condition is not yet quite as debilitating as the evidence of the applicant and Dr Bossingham suggests.

[107] Further, his employment history does not suggest significant achievement in or sustained commitment to paid employment. As a person who has not been in regular paid employment for a long time and who recently served a prison sentence for two and a half years[140] he is unlikely to be competitive in securing lucrative paid employment. His skills and background mean he is better suited to construction work or other employment involving physical labour. However his physical condition impairs his capacity to perform such work. His capacity for gainful employment is limited.

[108] The respondent deposes to holding assets with a net worth of $225,690.98.

[109] Her taxable income in 2011 appeared in one record as $114,277[141] although she explained her adjusted taxable income in 2011 was $72,989.[142] She continues in gainful employment in her field of nursing and with the exception of an obvious

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137 Ex 9.
138 T1-65 l8.
139 Ex 10.
140 Ex 8H [10].
141 T5-13 l35.
142 Ex 58.

hearing deficit[143] exhibited during the trial there is no evidence to suggest she does not have the capacity to continue in gainful employment.

[110] The applicant alleges the Edgar St property is being used to run a business called Probalance. He exhibited a photograph showing a business of that name advertised on the door of the premises.[144] However the evidence does not support a conclusion that the advertised business is actually being conducted there.[145] He also alleges the upstairs level at the Severin St property is being rented out but again there is no evidence of that.[146]

Caring for children (s 299)

[111] The children are now adults so this is an irrelevant consideration.

Necessary commitments (s 300)

[112] The court must consider the commitments of each de facto partner necessary to enable the de facto partner to support himself or herself and any other person whom the de facto partner has a duty to maintain.

[113] Neither party is under a duty to maintain another. As to their own commitments the applicant has no significant commitments of concern in this context. However the respondent has a significant mortgage liability to service in respect of Severin St. The liability apparently exceeds the property's value. The consequences of the respondent potentially being unable to service that debt are relevant.

[114] The respondent also has more significant recurrent outgoings than the applicant, particularly expenses associated with ownership of real property.[147] Indeed the applicant does not pay any recurrent outgoings. His current de facto partner pays for them.

Responsibility to support others (s 301)

[115] Neither party has a responsibility to support another person.

Government assistance (s 302)

[116] Despite his disability, the applicant is not in receipt of a government pension, allowance or benefit.[148] Insufficient evidence was lead to allow any informed conclusion to be reached as to his eligibility.

Appropriate standard of living (s 303)

[117] The court must consider what standard of living is reasonable for the de facto partners in all the circumstances.

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143 Said in Ex 58, her statement of financial circumstances, to be profound hearing loss. The same document refers to scoliosis of the spine but there was no other evidence on that topic.

144 Ex 8J.

145 T5-37 l50.

146 Ex 8I [7], 8J [2].

147 Compare Ex 8I with Ex 58 (note the latter irrelevantly included expenses associated with the Kuranda property in her capacity as trustee).

148 Ex 8I [18].

[118] This is not a case in which either party is said to be use to or require a particularly high standard of living. They appear to have a standard of living within the range of ordinary.

[119] The respondent complains the Edgar St property at which she lives is of a poor habitable standard. Photographs confirm the top floor is the subject of ongoing incomplete building work so that its living environment is only basic.[149] If she spent the substantial amount she borrowed against the Severin St property for the purpose of making the Edgar St property "more habitable"[150] the balance of the building is likely to be in a more complete and comfortable state.[151]

[120] It is relevant that the applicant's son has agreed by a document styled Deed of Gift to gift his interest in the Kuranda property to the applicant.[152] The evidence does not permit of any precision as to what the value of that gift will be, assuming the applicant does not waive it when the beneficial interest is realised. I infer it would likely be worth $80,000 to $100,000. It is not yet a resource in the hands of the applicant however this evidence suggests the applicant will not want for a reasonable standard of living.

Contributions to income and earning capacity (s 304)

[121] There is no evidence to suggest any material contributions made by either of the parties to the income and earning capacity of the other. This is not for example a case in which one of the parties worked to support the other in achieving a qualification that has enhanced earning capacity.

[122] There is some prospect of the two properties owned by the respondent being used to raise rental income. Their potential for such use flows in part from the applicant having made a minor contribution to those properties, which is a relevant consideration.

Length of relationship (s 305)

[123] The relationship lasted from the mid-1980's to early 2002.

Effect of relationship on earning capacity (s 306)

[124] This is not a case in which either party appears to have been disadvantaged in their earning capacity by reason of the relationship. While the respondent stayed at home and was not working when the children were younger, and was thus unable to pursue her nursing career, there is no evidence of her future earning capacity as a nurse having been materially affected by doing so.

Financial circumstances of cohabitation (s 307)

[125] If either de facto partner is cohabitating with another person the court must consider the financial circumstances of the cohabitation.

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149 Ex 53.

150 T4-98 l20.

151 The downstairs section is apparently finished, see T5-70 l57, and they live in it, see T5-52 l29.

152 Ex 43 annexure F.

[126] The applicant is cohabiting with his de facto partner at her home. He is financially supported by her "in every way".[153] He has not applied for government assistance because he does not think he would qualify because of the degree of support she gives him.[154] That he is so well provided for is a consideration tending to undermine consideration of his lack of resources and limited capacity for gainful employment.

[127] There was evidence from the respondent that in recent years she received some financial contributions from some of her children for about 10 per cent of her household's weekly expenses.[155] That is unsurprising given they are members of her household. It is generous and more beneficial to them then it is to the applicant.

Child maintenance (s 308)

[128] The parties do not provide payments for maintenance of any child in their care.

Other facts and circumstances (s 309)

[129] The court must consider any fact or circumstance the court considers the justice of the case requires to be taken into account. There is an obviously relevant additional fact or circumstance here.

[130] The applicant inherited about $320,000 from his father in July 2005, a sum of money considerably greater than the net value of the property pool with which this case is now concerned.

[131] That inheritance was received after the separation. It was not part of the property pool. He dissipated virtually all of it, as was his right. However he now seeks to rely on his impaired capacity to secure gainful employment and his lack of assets as relevant considerations in his favour. He first saw Dr Bossingham for his rheumatoid arthritis in 2002 and must by 2005 have been well aware of his increasingly impaired capacity for gainful employment. He must equally have been aware of his general lack of assets. His dissipation of such a significant sum is a major counter-balance to the consideration that he has few assets and limited capacity for gainful employment. It would be unjust to attribute material weight to those latter considerations without also having regard to the former.

Step 4: Consideration of whether provisional result is just and equitable

[132] The upshot is that the considerations referred to as part of step three above go very close to balancing each other out and are only marginally in the applicant's favour. In all of the circumstances they only call for a minor variation to the provisional conclusion reached by me as part of step two above.

[133] That provisional result should be slightly increased from eight per cent. The applicant should be entitled to 10 per cent of the net worth of the property pool.

[134] It is necessary for me to consider whether such an apportionment is just and equitable.

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153 T2-55 l18.
154 T2-55 l49.
155 T5-25 l30.

[135] Having collective regard to all of the considerations canvassed above and in all the circumstances of the case such a 10 per cent apportionment is just and equitable. The reality is that the applicant's financial and non-financial contributions to the major assets in the property pool, the Severin and Edgar St properties, were relatively minor. His more significant contribution was to the Kuranda property but he made that contribution, just as the respondent made her significant contributions to that property, well aware that it was for the benefit of the beneficiaries of the trust on which that property was held, namely their children. His contributions to family welfare were unremarkable.

[136] As to his personal circumstances his limited assets and impaired capacity for gainful employment are concerning but on the other hand they fall to be considered against a past of modest commitment to sustained paid employment, saving and the accumulation of assets. Moreover he enjoys the complete financial support of his de facto partner and since separation has been content to dissipate an inheritance significantly greater than the property pool with which I am now concerned.

Conclusion

[137] In the circumstances the just and equitable outcome is that the applicant is entitled to 10 per cent of the net value of the property pool of $242,172.98.

[138] That equates to an amount of $24,217.30. He already holds $16,482 worth of that pool. Accordingly he ought to receive a further $7,735.30.

[139] Given the present asset holdings of the parties the sensible course is to allow the respondent to pay that amount to the applicant. If it is not paid within a reasonable period then arrangements should be made for the sale of the Edgar St property in order that the amount can be paid from the proceeds of sale.

[140] The effect of s 341 is that in the normal course each party should bear its own costs. It is obvious that the circumstances of this case do not justify making an order for costs, particularly bearing in mind that the parties are self represented. There will be no order as to costs. However if the parties wish to be further heard as to costs they have liberty to apply to do so under a general order I will make giving liberty to apply.

Orders

[141] My orders are:

> 1. The respondent pay to the applicant the sum of $7,735.30 by way of property adjustment pursuant to Pt 19 *Property Law Act 1974* (Qld).
>
> 2. That amount is to be paid by 23 July 2013.
>
> 3. If the respondent fails to make the payment in full referred to in order 1, unless the parties agree otherwise in writing, the property situated at Edgar St, Bungalow, described as Lot 35 on Registered Plan 709521, County of Nares, Parish of Cairns, Title Reference 20374115 ("the property") is to vest in a trustee to be agreed by the

parties, or, failing agreement, a trustee nominated by the President of the Queensland Law Society, to sell the property.

4. The trustee shall distribute from the net proceeds of sale the costs of the trustee, $7,735.30 to the applicant and the balance to the respondent.

5. Pending the payment referred to in order 1, the respondent is restrained from encumbering the property without the written consent of the applicant, other than the purpose of raising sufficient money to make the payment.

6. The parties otherwise retain their respective real and personal property free of all claims from each other.

7. Liberty to apply on the giving of two days notice in writing on the form of order and as to costs.