SUPREME COURT OF QUEENSLAND

CITATION:	*LW v GAB* [2007] QCA 386
PARTIES:	**LW** (plaintiff/respondent) **v** **GAB** (defendant/appellant)
FILE NO/S:	Appeal No 5451 of 2007 SC No 6969 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	9 November 2007
DELIVERED AT:	Brisbane
HEARING DATE:	26 October 2007
JUDGES:	Williams and Keane JJA and Dutney J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal dismissed** **2. Appellant to pay respondent's costs on the standard basis**
CATCHWORDS:	FAMILY LAW AND CHILD WELFARE – DE FACTO RELATIONSHIPS – ADJUSTMENT OF PROPERTY INTERESTS – GENERALLY – where learned trial judge found appellant's evidence unreliable – whether learned trial judge incorrectly included certain items in asset pool – whether 70/30 apportionment in favour of appellant was overly generous to respondent *FO v HAF* [2006] QCA 555; Appeal No 4280 of 2006, 19 December 2006, applied *Murphy v Murphy* [2007] FamCA 795, cited
COUNSEL:	H B Fraser QC, with T A Houghton, for the appellant W J Hodges for the respondent
SOLICITORS:	Hopgood Ganim Lawyers for the appellant Canning Craymer Lawyers for the respondent

[1] **WILLIAMS JA:** Particularly given the adverse findings made with respect to the credibility of evidence given by the appellant, which findings were clearly justified,

the conclusion reached by the judge at first instance with respect to the value of the asset pool and its distribution does not reveal any appellable error. I agree with the reasons published by Keane JA for concluding that the appeal should be dismissed with costs.

[2] **KEANE JA:** In August 2004, the respondent to this appeal commenced proceedings in the Trial Division for relief under Pt 19 of the *Property Law Act 1974* (Qld) ("the Act") for a just and equitable property distribution after the end of her de facto relationship with the appellant. That relationship lasted for 11 years, commencing in May 1993 and concluding on 18 March 2004. The respondent's proceedings came to trial in February this year. In a judgment delivered on 28 May 2007, the learned trial judge held that the value of their pool of assets was $3,815,221, and divided the asset pool 70/30 in favour of the appellant. In consequence, the appellant was ordered, inter alia, to pay to the respondent $1,137,741.

[3] The appellant contends that the learned trial judge erred in:

(a) inflating the value of the asset pool available for distribution by including items which should not have been so included; and

(b) making an overly generous apportionment of the asset pool to the appellant, the just and equitable distribution being of the order of 85/15 in favour of the appellant.

[4] The learned trial judge canvassed the evidence in detail and made comprehensive findings of fact. The determination of the application involved the exercise of a judicial discretion as to what was a just and equitable property distribution. That discretion fell to be exercised on the basis of findings of primary fact in which the credibility of each of the parties was important. Her Honour formed the view that the appellant's evidence concerning his financial affairs was unreliable, that he had failed to make proper disclosure in relation to his assets and to observe his obligations in relation to the timely preparation and lodgement of income tax returns.[1] Further, her Honour found that he had fabricated evidence in August 2005 with a view to creating a false impression that he owed over $1 million to his father as a result of a loan.[2] In these circumstances, it is hardly surprising that the learned trial judge preferred the evidence of the respondent to the evidence of the appellant in relation to the circumstances of their relationship. The appellant has not sought to challenge the correctness of her Honour's adverse view of the credibility of the appellant or of the findings of primary fact which reflect her Honour's preference for the evidence of the respondent to that of the appellant.

[5] Counsel who represented the appellant in this Court recognised the constraints which the decision below imposes on the scope of meaningful challenge to the decision of the learned trial judge. As a result, the submissions made on behalf of the appellant consist largely, though not entirely, of specific challenges to particular findings of the learned trial judge. These challenges can be grouped under the two broad rubrics set out above. It is convenient to deal with these submissions in the same way. I will discuss the evidence which is of particular relevance to each of these submissions as I deal with them in turn.

---

1 *CL v JMG* [2007] QSC 169 at [112], [137], [140], [143], [144].

2 [2007] QSC 169 at [51] - [55].

The asset pool

[6] The appellant argues that the learned trial judge made a number of errors in relation to the inclusion of assets in the pool of the parties' assets and in relation to the value attributed to those assets. I shall deal with these arguments in turn.

Maintenance and repairs

[7] Uncontroversial inclusions in the asset pool of the parties were properties at Sanctuary Cove and Ereton Drive. These properties were valued for the purposes of the trial at $1,500,000 and $1,200,000 respectively. The valuations were tendered without the valuer being required to give oral evidence or be cross-examined. They were found to have been made on an "as is" basis.[3] So much was expressly conceded by the appellant's counsel at trial. Unsurprisingly, therefore, the learned trial judge did not deduct from those values the cost of repairs and maintenance, said to be $221,742 and $190,850 respectively. The appellant contends that her Honour's conclusion in this regard does not accord with the evidence.

[8] In support of this argument, the appellant's written submissions pointed to disclaimers in the Sanctuary Cove valuation to the effect that: "This report does not constitute a structural survey", and that "the valuer … is … unable to certify the structural soundness of the improvements." The further point is made that, at the time of trial, the appellant had engaged a builder to carry out repairs on the Sanctuary Cove property and had paid a $10,000 deposit on the repair contract.

[9] The appellant's written submissions also asserted the absence of evidence that the repairs and maintenance work will enhance the value of either property suggests that the work is necessary merely to maintain the value of each property. This assertion is contradicted by the terms of the valuation of the Sanctuary Cove property which expressly refers to the need for expenditure in repairs to bring the property up to the standard of other properties with which it was compared. On the face of the Sanctuary Cove valuation, the need for further work was recognised, but it is also clear that, even on that basis, the property was valued at $1,500,000.

[10] In relation to the Ereton Drive valuation, it stated on the face of the valuation that no examination had been made for any defect "latent or patent". It appears from the face of the valuation that the valuation was given that no repairs were regarded as necessary to bring the property up to its valuation of $1,200,000.

[11] The points made in the appellant's written submissions are points which could and should have been raised with the valuer if it was to be argued that the concession that the valuations were of each property "as is" was not to be taken at face value. The appellant is bound by the conduct of his case at trial. It is not open to the appellant to invite this Court to act upon speculation as to what the valuer might have said about the impact of the need for maintenance and repairs on his valuations when the appellant did not trouble to raise these matters in evidence with the valuer. Further, this Court is entitled to reject the speculation proffered by the appellant on the footing that the valuer was not asked these questions because of an appreciation on the part of the appellant's counsel that the valuer's answers would not have assisted the appellant's case.[4] The valuer was not retained solely by the respondent: it could not be suggested that the valuer was to be regarded as unavailable to the

---

[3] [2007] QSC 169 at [142].

[4] *Jones v Dunkel* (1959) 101 CLR 298 at 308, 320 – 321.

appellant to confirm or reject the speculation upon which the appellant now invites this Court to act.

[12] In oral argument on the appeal, the submissions advanced on the appellant's behalf took a different approach. The point was made that it was accepted at trial that the appellant had engaged Mr Dallow to carry out repairs on each of the properties the need for which was not denied by the respondent. It may be that it is putting matters a little high to say that the evidence established contracts binding the appellant to pay for this work, but, however that may be, it is clear that, at best for the appellant, the contracts were made in May 2006, well after the parties' relationship had come to an end, and without consulting the respondent. The learned trial judge was clearly correct in declining to regard the liabilities assumed by the appellant as having nothing to do with the value of the pool of assets available for distribution. To the extent that any liability was truly incurred by the appellant, it is the appellant and he alone who was responsible for incurring the liability and he alone who will benefit from the expenditure.

Realisation costs and capital gains tax

[13] The learned trial judge found as a fact that the appellant would retain the Ereton Drive property.[5] The appellant submits that he must sell assets in order to comply with the order of the learned trial judge. The appellant gave evidence at trial, which it is said was uncontradicted, that it was his intention to sell this property. Accordingly, so it is argued, the learned trial judge should have deducted from the value of the property pool the sum of $292,800 being the total amount of realisation costs and capital gains tax payable on the sale of the property.

[14] As I have noted, the learned trial judge had concluded that the appellant's evidence was unworthy of belief. There were a number of reasons which led her Honour to that view: these reasons include the appellant's lack of candour about his financial resources, his failure to make full disclosure of his financial affairs and his attempt to fabricate a liability of over $1 million. These were good reasons to regard the appellant's evidence with scepticism especially where it concerns his own assertions of his intentions in relation to his financial dealings. That being so, it is idle to say that the appellant's evidence of his intention was uncontradicted.

[15] On a matter where the appellant's financial advantage is in issue, his uncorroborated testimony cannot be regarded as a reliable guide to the truth of the matter. Further, on any view of the evidence, the appellant is clearly a man of very considerable financial resources. The appellant failed to account for the whereabouts of at least $1 million possessed by him in 1992, and any accretions to that sum over the years.[6] A decision by the appellant whether or not to liquidate one asset rather than another is distinctly unlikely to be a matter where he could not choose to avoid tax imposts consequent upon, or the costs of, asset realisation if he wished to do so by the use of undisclosed funds.

[16] Accordingly, in my respectful opinion, the learned trial judge was not bound to accept the appellant's assertion that he needs to sell assets to comply with the order of the court. Much less was her Honour bound to accept that the appellant cannot raise funds by the liquidation of assets which will not attract realisation costs or capital gains tax.

---

5 [2007] QSC 169 at [146] – [147].

6 [2007] QSC 169 at [77] – [78], [106] – [112], [143] – [144].

Income tax

[17] The appellant gave evidence at trial that Queensland Storage Systems Pty Ltd ("QSS"), a company with which he is associated, has been listed for sale, and that he will incur an income tax liability of $47,184 upon that sale. He asserted in his written submissions that this amount should be deducted from the value of the asset pool.

[18] On the hearing of the appeal, this assertion was not supported by oral argument. I reject the appellant's assertion. Once again, the learned trial judge's scepticism about the appellant's stated intentions means that her Honour was not bound to accept this submission. In any event, as a matter of legal principle, it is difficult to see why an impost referable to the appellant's income should be treated as a set off against the capital value of the asset pool.

The discretionary trust

[19] The appellant is the beneficiary of a discretionary trust in New Zealand settled by his accountant in 1996. The appellant was the trustee of this trust until 30 April 2002 when he resigned, and a company, JMG Trust Ltd, was appointed. The only shareholder of JMG Trust Ltd is the appellant's brother; its directors are his father and brother. The appellant had been informed by JMG Trust Ltd that the trust would be wound up by 12 August 2007.[7] It has been seen that the learned trial judge gave judgment before that deadline had arrived.

[20] The learned trial judge found that the appellant would be regarded by JMG Trust Ltd as beneficially entitled to $587,055 being the Australian dollar equivalent of the balance of the moneys paid by him into the trust less drawings he made.[8] The appellant argues that this finding was not supported by the evidence, and that the amount of these funds was, at most, a financial resource of uncertain value which should not have been included in the asset pool.

[21] It is true that the appellant had, speaking in terms of legal theory, only an entitlement to the due administration of the trust;[9] but the facts of this case made that expectation a practical certainty of no less value in financial terms than an indefeasible proprietary interest. The fund had originally been established by payments by the appellant. It seems, in practical terms, to have been operated by him as a loan account. There was no real possibility that the appellant's father and brother would not ensure that the benefit of moneys which originated from the appellant would be returned to him. In particular, there was no suggestion that his father and brother would not act towards him as one would expect them to act as his closest blood relations: there was no suggestion that they had ever acted contrary to his financial interests or, indeed, contrary to his stated desire. There was no suggestion that either of them had even identified another candidate as a possible recipient of the distribution or were even inclined to consider doing so. There was simply no evidence that an outcome other than payment to the appellant was even a remote possibility.

[22] In these circumstances, the learned trial judge was, in my respectful opinion, amply justified in proceeding on the footing that, by reason of the practical effect of the legal mechanisms which the appellant has put in place, the expectation that the

---

7 [2007] QSC 169 at [117].
8 [2007] QSC 169 at [120].
9 Cf *In the Marriage of Whitehead* (1979) FLC 90-673.

appellant will receive the benefit of the fund is so strong that the value of that expectation is no less than the value of an indefeasible interest in the whole of the fund. That being so, there is, in practical terms, no reason to split hairs in describing the appellant's expectation in respect of the fund as a financial resource rather than an asset of the parties.

[23] It is convenient to note here that the appellant also argues that his interest in the trust fund should not have been treated as part of the asset pool of the parties because there was no evidence that the fund was not derived from sources entirely independent of the relationship between the appellant and the respondent. But the fund was established in 1996. At that time, the de facto relationship between the parties had existed for nearly three years. There was no reliable evidence demonstrating that the appellant's accumulation of the funds in the trust was not in some way facilitated by the contributions of both parties. The appellant's failure to make full and frank disclosure[10] and the absence of any reliable evidence to show that the moneys in the trust fund derived from "matters unconnected with" the respondent[11] justified the learned trial judge's inclusion of the appellant's interest in the trust as part of the pool of assets available for distribution.

Other resources

[24] The learned trial judge concluded that the appellant has undisclosed financial resources in New Zealand.[12] Her Honour went on to hold that none of these undisclosed resources "resulted from any contribution, direct or indirect, made by [the respondent]."[13]

[25] In the appellant's written submissions, he argued that there should have been no reference at all to these unvalued resources because they were not part of the asset pool. But that is not the basis on which they were taken into account, and it is not surprising that this contention was not supported by oral argument on the hearing of the appeal. The learned trial judge had regard to the existence of these unvalued resources as part of her consideration of what would be a just and equitable distribution of the asset pool.[14] Her Honour was expressly obliged to proceed in this way by s 298(a) of the Act.

The appellant's superannuation entitlements

[26] The appellant owned a self-managed superannuation fund which had net assets as at 30 June 2003 of $29,867 and $78,852 as at 30 June 2004.[15]

[27] The appellant argues that the learned trial judge erred by treating the appellant's superannuation entitlement as a realisable asset and part of the asset pool available for distribution. The appellant also argues that, to the extent that the superannuation fund increased in value in the last year of the relationship, it could not be said that the respondent contributed to this increase in value because the relationship was

---

10 *In the Marriage of Black and Kellner* (1992) FLC 92-287; *In the Marriage of Weir* (1993) FLC 92-338.

11 Cf *Whiterod v Taylor* (2006) FLC 93-266.

12 [2007] QSC 169 at [143].

13 [2007] QSC 169 at [144].

14 [2007] QSC 169 at [144].

15 [2007] QSC 169 at [136].

breaking down during the period. The appellant submits that the whole of the $78,852 should be deducted from the asset pool found by the learned trial judge.[16]

[28] The appellant's suggestion that the respondent could not have contributed to the increase in value of the appellant's superannuation fund between 2003 and 2004 cannot be maintained. The relationship did not end until mid-March 2004, and the respondent continued to work for QSS for 14 weeks after the de facto relationship ended.[17]

[29] As to the balance of the appellant's submission on this point, an expert was appointed to value the parties' asset pool. The expert included in the asset pool the value of the appellant's superannuation fund as advised by the appellant's solicitors. There is evidently no practical reason why the value attributed to the appellant's superannuation entitlement should be regarded as a financial resource rather than an asset of the parties.

The apportionment

[30] I turn now to consider in turn the appellant's arguments that the apportionment of the asset pool 70/30 in favour of the appellant was excessively generous to the respondent.

The appellant's initial contributions

[31] The appellant submits that the learned trial judge erred in failing to recognise that the appellant's initial financial contributions to the purchase of the Sanctuary Cove property and the Ereton Drive property were of such significance as to attract special recognition in the division of the increases in capital value of those properties.

[32] As to the Sanctuary Cove property, the appellant purchased a property at Runaway Bay for $285,000 in April 1996. The parties lived there until January 1997. The appellant then purchased the Sanctuary Cove property by way of exchange with the Runaway Bay property plus $200,000 cash.[18] The learned trial judge found that the capital gain of $1,000,000 in the value of the property which had occurred by the time of trial was not due to a greater contribution by either party having regard to the respondent's non-financial contributions of a domestic nature.[19]

[33] The appellant argues that these findings fail to recognise the true significance of the appellant's sole initial financial contribution to the purchase price. This is said to be because the appellant's contribution of the purchase price was "the most significant contribution (if not the only contribution) to the increase in capital value".

[34] The appellant relies upon the observations made in this Court in *FO v HAF*[20] citing *Burgess v King*[21] that as a "prima facie position … the parties should participate in the capital appreciation of an asset of the relationship in accordance with their initial contributions to the relationship".

---

16 [2007] QSC 169 at [156].

17 [2007] QSC 169 at [13] – [15], [91] – [96], [151].

18 [2007] QSC 169 at [79] – [80].

19 [2007] QSC 169 at [82].

20 [2006] QCA 555 at [55].

21 [2005] NSWCA 396 at [25].

[35] The respondent counters that the appellant's argument fails to recognise that, at the time the Runaway Bay property was purchased, the parties had been in a de facto relationship for more than two and a half years, and that the respondent made non-financial contributions of a domestic nature in relation to the Runaway Bay household. Further, by the time the Sanctuary Cove property was purchased in 1997, the respondent had been making a contribution to the domestic life of the parties for more than three and a half years. The learned trial judge found that, in addition to the respondent's non-financial contributions, the respondent made financial contributions to the general welfare of the parties through her assistance in the development of the business of QSS after April 1995.[22]

[36] The appellant also criticises the learned trial judge for addressing first:

> "the contributions made by the parties, financial and non-financial, as the identification and valuation of the property, resources and liabilities of the parties at the end of the relationship depends in this case on an assessment of their initial contributions and the change in their property and financial resources during the relationship."[23]

On the appellant's behalf, it is argued that her Honour's approach departed from the approach of the Full Court of the Family Court in *Hickey v Hickey*[24] and recommended by this Court in *FO v HAF*[25] in the following terms:

> "It has frequently been emphasised that the judicial discretion conferred by s 286(1) of the PLA and its analogues in other statutes should not be constrained by pre-determined guidelines (*Norbis v Norbis* (1986) 161 CLR 513; *In the Marriage of Lenehan* (1987) 11 Fam LR 615; *Kardos v Sarbutt* [2006] NSWCA 11 at [51]). It is essential, however, that the matters referred to in the provisions set out above be taken into account, and that they are 'seen, in the reasons for judgment, to have been taken into account' (*Davut and Raif* [1994] FLC 92-503 at 81,237). To this end, the four step approach explained by the Full Court of the Family Court in *Hickey v Hickey* ([2003] FLC 93-143 at 78,386, cf *Kardos v Sarbutt* [2006] NSWCA 11 at [28] – [29]; (2006) 34 Fam LR 550 at 558) provides a useful discipline to ensure clarity of thought and transparency of judicial reasons.
>
> The Full Court of the Family Court explained in *Hickey and Hickey*, ([2003] FLC 93-143 at 78,386) in relation to the *Family Court Act* analogue of Pt 19 of the PLA, that the first step in making a property adjustment order is the identification and valuation of the property, resources and liabilities of the parties. The second step is the identification and assessment of the contributions of the parties to their pool of assets and the determination of their contribution-based entitlements in accordance with s 291 to s 295 of the PLA. The third step is the identification and assessment of the factors in s 297 to s 309 of the PLA to determine the adjustment to the contribution-based entitlement. The fourth step in the process is consideration of

---

22 [2007] QSC 169 at [82], [85] – [97].
23 [2007] QSC 169 at [22].
24 (2003) FLC 93-143 at 78,386.
25 [2006] QCA 555 at [51] – [52].

> the result of these earlier steps to determine whether that result is just and equitable in accordance with s 286 of the PLA."

[37] The appellant argues that the approach taken by the learned trial judge led her Honour to focus upon the contributions of the parties over the course of their relationship and to lose sight of the fact that the initial financial contribution to the acquisition of the Sanctuary Cove property was made exclusively by the appellant.

[38] The first difficulty with the appellant's argument is that, as I have noted, the appellant's contribution to the acquisition of the Sanctuary Cove property is not accurately described as an "initial contribution to the relationship".

[39] Secondly, the learned trial judge did not lose sight of the fact that the initial financial contribution to the purchase of the Sanctuary Cove property was made exclusively by the appellant. Her Honour said:

> "There was significant capital gain in this and other property after the de facto relationship commenced. Ms L did not contribute financially to the purchase of the Sanctuary Cove property but she made significant non-financial contributions to its conservation and improvement as well as contributing financially to the general welfare of the family through her assistance in building the success of the business of QSS Pty Ltd. She also made significant non-financial contributions to family welfare. Apart from JMG's initial financial contribution to purchasing the property, the capital gain of $1million is not due to any greater contribution by one partner over the other."[26]

[40] Thirdly, the "prima facie position" as to the participation in the capital appreciation of an asset based on the contributions of the parties is, of course, subject to adjustment by the Court. Indeed, the alteration of the prima facie property rights of the parties to a de facto relationship, where it is just and equitable to do so, is the reason for the enactment of Pt 19 of the Act. It may be accepted that the financial contribution by the appellant should be regarded as the most significant pointer to the extent to which each party should participate in the capital appreciation of the Sanctuary Cove property; but the problem for the appellant is that the discretionary distribution fixed upon by the learned trial judge, in light of all the considerations set out in the Act, is not necessarily inconsistent with that proposition.[27]

[41] The learned trial judge clearly recognised the appellant's financial contribution to the acquisition of the Sanctuary Cove property and his strong claim in relation to the capital gain attributable to that property. That was inevitably an impressionistic exercise. But this Court must respect the discretionary nature of the exercise performed by the learned trial judge in reorganising the parties' rights upon the termination of their relationship. And it must be borne in mind that the appellant's failure to make proper disclosure made it impossible to approach the determination of the true extent of the asset pool with precision.

[42] In these circumstances, in my respectful opinion, it is not possible to say that an overall distribution of assets of the appellant and respondent on a 70/30 basis in favour of the appellant is so disproportionate as to manifest error on her Honour's

---

26 [2007] QSC 169 at [82].

27 Cf *Zyk v Zyk* (1995) FLC 92-644 at 82,517. See also *Murphy v Murphy* [2007] FamCA 795 at [706].

part in her appreciation of the significance to be attributed to the appellant's initial financial contribution to the acquisition of the Sanctuary Cove property.

[43] As to the Ereton Drive property, the appellant bought the Ereton Drive property for $160,000 on 19 October 1993.[28] The business of QSS was carried on from this address. Other, unrelated, tenants were also located here.

[44] As has been seen, this property was valued at $1,200,000 at trial. All the direct financial contributions to the acquisition and upkeep of this property were made by the appellant and QSS. In particular, the property was improved by the construction of a warehouse for $324,211. QSS borrowed the funds to finance this improvement. The learned trial judge found that the respondent contributed indirectly to the increase in the value of this property by her contributions to the welfare of the parties and to the financial success of QSS.[29] The findings as to the indirect financial contributions made by the respondent are not challenged by the appellant.

[45] Once again, the appellant's submission fails to recognise the real, albeit indirect, contribution by the respondent to the increase in the value of the property by reason of her contribution to the success of QSS and the improvement of the property by QSS. Further, the increase in the value of the Ereton Drive property cannot sensibly be viewed as solely attributable to the passive holding by the appellant of an asset acquired by him in 1993. One must bear in mind here the respondent's real contributions to the relationship of the parties over the period of 11 years, and the commercial success of QSS.[30]

[46] The overall apportionment of 70/30 in the appellant's favour reflects a clear recognition by the learned trial judge of the significance of his financial contributions to the relationship. It is important to emphasise again that where a judge is called upon to make an impressionistic and evaluative judgment, an appellate court must respect the margin of appreciation allowed by the legislature to the judge charged with the exercise of the discretion to alter the property rights of the parties. In the light of these considerations and the uncertainty created by the appellant's failure to make candid disclosure, the significance attributed to the respondent's ongoing contribution to the increase in value does not strike one as so disproportionate as to be a manifestation of error.

The relative non-financial contributions of the parties

[47] The appellant submits that the learned trial judge failed to take into account the appellant's non-financial contributions to the relationship of the parties or gave excessive weight to the respondent's contributions in that regard.

[48] This submission proceeds expressly on the premise that the learned trial judge did not take into account the non-financial contributions of the appellant. That premise is incorrect. The learned trial judge dealt with these matters at some length.[31]

---

28 [2007] QSC 169 at [83].
29 [2007] QSC 169 at [83] – [85], [86] – [97].
30 *Kessey v Kessey* (1994) FLC 92-495 at 89,151; *Pierce v Pierce* (1999) FLC 92-844 at 85,881.
31 [2007] QSC 169 at [24] – [25], [86] – [96].

The respondent's contributions to assets derived by inheritance or from trusts for the appellant

[49] The appellant submits that the learned trial judge failed to give sufficient weight to the absence of any contribution by the respondent to the assets of the appellant which were derived from inheritance or trusts in which he was interested.

[50] The appellant's submission fails to recognise that the learned trial judge's apportionment did indeed recognise that the contribution of the respondent to the pool assets from funds available to him independently of their relationship was much greater than that of the respondent. In this regard, notwithstanding the 11 year relationship between the parties during the course of which the respondent made significant contributions direct and indirect to the relationship, the respondent is to receive only 30 per cent of the assets of the relationship.

An appropriate distribution

[51] The appellant argues that, having regard to its other submissions, an overall apportionment of the asset pool of 70/30 in favour of the appellant was manifestly excessive in the respondent's favour and not supported by her Honour's findings of fact. It is submitted that a correct apportionment is 85/15 in favour of the appellant.

[52] For the reasons I have given, I reject the bases on which this submission is founded, and, accordingly, I reject this submission as well.

Conclusion and orders

[53] The appellant has not demonstrated an appellable error on the part of the learned trial judge.

[54] The appeal should be dismissed.

[55] The appellant should pay the respondent's costs on the standard basis.

[56] **DUTNEY J:** I have read the reasons for judgment of Keane JA. I agree that for the reasons he gives the appeal should be dismissed with costs.