SUPREME COURT OF QUEENSLAND

CITATION:	*A v S* [2006] QSC 240
PARTIES:	**A**
	(Applicant)
	AND
	S
	(Respondent)
FILE NO/S:	S616 of 2005
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	20 June, 2006
DELIVERED AT:	Townsville
HEARING DATE:	13 June, 2006
JUDGE:	Cullinane J
ORDER:	
CATCHWORDS:	PROPERTY LAW – Pursuant to Part 19 "Property (de facto relationships)"of the *Property Law Act* 1974 the applicant sought an order of property adjustment – pursuant to s287 of the Act all requirements are satisfied.
	Property Law Act 1974 (Qld)
	Pierce v Pierce (1999) Family Law Cases 92-884 relied on.
COUNSEL:	Mrs W. Pack for the Applicant
	Mr Scott-McKenzie for the Respondent
SOLICITORS:	Thynne Mcartney for the Applicant
	McDonald Leong Lawyers for the Respondent

[1] These are proceedings under Part 19 of the *Property Law Act* 1974 as amended seeking an order by way of adjustment of property interests. The parties differ substantially as to what is a just and equitable distribution of the property available for the making of such an order.

[2] The requirements of s.287 of the Act are satisfied in this case. The parties lived in a de facto relationship from May 1995 until August 2003. There is one child of the relationship born on 12th April, 2002 who lives with the respondent mother.

[3] There were relatively few factual matters in dispute. These will be apparent in the course of these reasons.

[4] The Applicant was born on 15th May 1957 and the Respondent on 26th December 1966.

[5] Each had been married before. The Applicant's wife died in 1995 and there were three children of the marriage born in 1981, 1983 and 1986 respectively.

[6] The Respondent was previously married and was separated when she met the Applicant. She subsequently was divorced.

[7] At the time of the commencement of the relationship the Applicant was living at a property at Tweed Heads owned by him. The Respondent was living in a unit at Burleigh Heads. They were both employees of the same bank.

[8] In the second part of 1996 the Applicant, the Respondent and the three children moved into a unit at Currumbin. The Applicant had purchased this for some $180,000 which was financed effectively by the sale of the Tweed Heads property and a mortgage of about $58,000. There had been some temporary borrowing pending the sale of the Tweed Heads property.

[9] The Respondent says that she and the Applicant found the property and they agreed to buy it with the Respondent suggesting a lower bid than the listed price which was accepted. The Applicant agrees that the Respondent made such a suggestion but says that the property had been recommended to him by a real estate agent who he knew prior to meeting the Respondent.

[10] The Respondent was in receipt of $42,000 a year as a funding manager and received a vehicle and a phone. The Applicant was a sales manager and received a package worth $85,000 including a car, phone and favourable home loan. The Applicant held shares and a vehicle as well as having funds in the bank. His position appears in exhibit 2.

[11] The Respondent held some 4,300 shares with Metway and some preferential shares as well as a motor vehicle which had a value of about $1,000. She says that the shares were sold after the commencement of the relationship and were placed in what is described as an offset account in the Applicant's name to which in the course of their living at the Currumbin unit, she also placed other monies.

[12] The effect of the evidence about this is that the monies held in the offset account were notionally deducted from the mortgage debt and interest charged only on the reduced sum. The Respondent gave evidence of payments being transferred from her own account into which her income was paid into the offset account after the payment of expenses.

[13] The Respondent says that she has not been able to obtain all the bank records in relation to this period. The evidence which appears at pages 53 to 56 shows the amounts which were paid to the Respondent's account during the time that the records are available. There are additional payments referred to at page 66 of the record. The total of the payments which appear in the financial records appear to be $15,719.00. Not all the monies went into the offset account at least initially.

[14] I accept that the Respondent paid the proceeds of the sale of the shares and also that the surplus of her income after expenses went into the offset account. This enabled the Applicant to obtain some relief from interest payments.

[15] A joint account was opened in May 2001.

[16] I accept that the Respondent used her income for household expenses and that the amounts to which I have referred were used to enable a concession on interest in respect of the monies owing on the Currumbin property. The Applicant's income was used for repayments of the loan and household expenses.

[17] The Applicant received a redundancy payment from the bank in June 1998 in the sum of $52,932 after tax. In September 1998 the Respondent received a redundancy payment of $33,792. The Applicant paid the redundancy payment into the offset account. There is a dispute as to whether the Respondent paid the whole of her redundancy payment into that account. It would appear that she purchased a vehicle from these monies for some $12,000 and that thereafter almost $9,000 was paid into the offset account. The Respondent said that she had put the whole or a substantial part of the monies into the offset account but did not have any other documentation or could not identify other amounts from the records.

[18] In January 2000 the Applicant and the Respondent moved to Cairns where the Applicant had obtained a position with Queensland Soccer. He was prior to this unemployed. The Respondent had been working for Group Training Australia following the termination of her employment with the bank. She commenced in March 1999 and received an income of about $40,000 per annum gross.

[19] She resigned from this position to move to Cairns with the Applicant and the children.

[20] At about this time the unit at Currumbin was rented and thereafter that income has been sufficient to discharge the monies owing on the property.

[21] The family resided in a rented property in Cairns.

[22] The Applicant and the Respondent subsequently moved to Townsville with the two younger children. The Applicant was there employed by Queensland Soccer and saw the move as one which offered him some prospects for advancement. The Respondent also obtained employment with this body

and did some part time work with the Australian Bureau of Statistics and the North Queensland Sports Foundation.

[23] In October 2000 the parties jointly purchased an investment property at Broadbeach Waters for some $127,500. They obtained a loan for the purchase price.

[24] In June 2001 they purchased a property at Chatswood Crescent, Annandale. This was purchased for $195,000 and again a full loan was obtained for the property. They resided at this house.

[25] The Currumbin property was used as security for the purchase of both properties. In order to obtain the loan on the property at Annandale it was necessary for the Respondent to obtain a letter from her employers setting out her income.

[26] Although the property at Broadbeach Waters was leased the rental was not sufficient to meet the repayments and the additional amounts were met from the monies each contributed from their earnings to the household as was the loan on the Annandale property.

[27] The parties permanently separated on 29th August 2003.

[28] Since that time both the property at Annandale and Broadbeach Waters have been sold. It is agreed that the proceeds of the sale of the Annandale property after discharging liabilities amount to $74,530 with the proceeds of the sale at Broadbeach Waters after discharging liabilities being $98,638.

[29] The property at Currumbin now has a value of some $380,000 and there is a mortgage of some $58,000. The mortgage has increased somewhat and I accept the Applicant's explanation for this.

[30] The shares which are owned either jointly by the applicants or in equal numbers individually have a value of a little over $20,000.

[31] The Applicant has in the last year moved to Tasmania where he is employed by Tasmanian soccer where he has a gross income of $45,000 a year together with a vehicle and telephone allowance.

[32] He has suffered from bowel cancer but has had successful treatment for this and is not currently suffering any ill health.

[33] The Respondent is enrolled at James Cook University as a full time student studying education. She is in receipt of a single mother's pension, family benefits and study benefits and child support. She receives $450 per month towards child support from the Applicant.

[34] She received some $13,800 by way of total income in the last financial year.

[35] The Respondent will complete her education degree, all things being well, at the end of 2008 when she expects to obtain employment as a primary school teacher.

[36] The child will commence school in 2007.

[37] The income which each has received and from which contributions to the household have been made appears in a document handed to the court by agreement between the parties.

[38] The figures are gross income. The Applicant during the relationship earned a total of about $259,000 whilst the Respondent earned about $169,000.

[39] There were years in which the Respondent earned more than the Applicant. It should also be borne in mind that the Respondent's capacity to earn an income during the latter part of this period was effected by her pregnancy and the subsequent birth of a child.

[40] Each of the parties has an entitlement to superannuation and had an entitlement to superannuation at the time of the commencement of the relationship. It was accepted that this entitlement was not available for the purposes of a property adjustment order but could be had regard to as a financial resource available to each party.

[41] At the end of the relationship the parties divided the furniture in accordance with what appears in Exhibit 3. I am satisfied the Respondent's furniture had little value. The Applicant's furniture had a value of some thousands of dollars. By and large the Respondent took the furniture she had at the commencement of the relationship.

[42] Section 291 provides so far as is relevant as follows:

Contributions to property or financial resources

(1) The court must consider the financial and non-financial contributions made directly or indirectly by or for the de facto spouses or a child of the de facto spouses to-

(a) the acquisition, conservation or improvement of any of the property of either or both of the de facto spouses; and

(b) the financial resources of either or both of the de facto spouses.

…

(3) It does not matter whether the property or financial resources mentioned in subsection (1) still belong to either or both of the de facto spouses when the court is considering the contributions made.

[43] Putting aside the question of the furniture it is common ground that the total of the assets available for a property adjustment order is about $530,000. The most substantial asset which the parties own, either jointly or separately is the apartment at Currumbin which has substantially increased in value. It has a net value of some $320,000 having at the time of the commencement of habitation a net value of about $120,000. The bulk then of the available property pool is accounted for by this asset.

[44] For the Applicant it was contended that his contribution at the commencement of the relationship of the property at Currumbin must necessarily weight heavily in his favour in any consideration of what is an appropriate property adjustment order. Reliance was placed upon what was said in *Pierce v Pierce* (1999) Family Law Cases 92-884.

[45] Whilst this general proposition is undeniable there has to be taken into account contributions which the Respondent made to the offset account which enabled the Applicant to obtain concessions by way of interest payments. The Respondent also brought the proceeds of the sale of shares which she had from a property settlement with her former husband.

[46] I have referred to their respective contributions of income and of the redundancy payments to the relationship. In the case of the Respondent, she it seems, paid part of her redundancy payment into the offset account.

[47] The properties acquired at Broadbeach and at Annandale were, it is common ground, to be treated equally between the parties.

[48] So far as non-financial contributions are concerned there was some dispute as to the extent to which the parties contributed to the landscaping and the establishment of the garden at the Annandale property. I accept each contributed although I am inclined to accept the Respondent's evidence that she was the major contributor in this regard.

[49] Any assessment of this consideration it seems to me must necessarily come down significantly in the Applicant's favour.

[50] <u>Contribution To Family Welfare</u>

The Applicant contends that contributions to family welfare should be assessed as being equal.

There was some dispute as to the extent to which the respondent contributed to the homemaking and parenting aspects of the joint life of the parties and the Applicant's three children. I am satisfied however that the Respondent made a full contribution to and shared with the Applicant the home making and parenting tasks.

[51] I accept also the proposition that to the extent the Respondent made those contributions the Applicant was relieved of the need to do so himself.

[52] It was contended that the Respondent's role in this regard was limited because of some hostility on the part of the children towards her. Whilst I accept that there may have been some difficulties particularly as the children moved into their teenage years, there is evidence before me in the nature of written communications between the children and the Respondent that suggests that the relationship included also fondness and affection. Particularly significant is the letter from the eldest child written after he had left home.

[53] From the time of the birth of the child of the relationship the homemaking and parenting tasks very substantially fell upon the Respondent. With the

transfer of the Applicant to Tasmania and the necessarily limited contact that he is able to have with the child, this has tended to increase.

[54] As has been pointed out during the period of the relationship, she relocated initially to the Applicant's unit at Currumbin where she assumed homemaking and parenting obligations and brought what limited property she had into the relationship. She transferred to Cairns ceasing employment to do so and thereafter from Cairns to Townsville.

[55] She will have for the foreseeable future the primary responsibility for the child's care and upbringing.

[56] Any assessment of this statutory consideration in my view must be regarded as favouring the Respondent on this application.

[57] So far as the age and health of the parties are concerned, I have already referred to this. The Respondent is some ten years younger than the Applicant and is in good health. The Applicant has had cancer but is not currently in poor health. Each has the capacity to work although the Respondent has, in my view not unreasonably, chosen to retrain.

[58] The Applicant currently pays $450 per month in respect of child support.

[59] There is nothing to suggest either party is living with any other person or has any financial obligations to any other person.

[60] The Respondent has for a period left the workforce as a result of having given birth to the child and taking steps to retrain herself. She will in the not too distant future re-enter the workforce.

[61] In the material filed and in argument before me the Applicant contended for a distribution of 80%-20% in his favour. In argument the Respondent contended for a distribution of 70%-30% in her favour. However as will be seen in her Affidavit she sought an equal apportionment.

[62] Balancing the considerations which have to be taken into account I think that a just and equitable order by way of property adjustment between the parties would be to order the payment to the Respondent of the sum of $200,000 reflecting an apportionment of the available property pool of a little under 40% to the Respondent.

[63] The Court has power to make an order under s. 333 (1) requiring one party to pay a sum to the other. However, given the way the total asset pool is made up, I think I should hear from the parties as to the appropriate form of order.