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Divorce case seeks to overturn asset-sharing principle

Should settlements reflect length of marriage?

Julie Sharp is fighting a court decision to award her former husband £2.7m

MARCH 2, 2017 by: Lucy Warwick-Ching

The latest divorce case to hit the headlines is seeking to challenge a longstanding "sharing principle" in the courts — whereby assets acquired during a marriage are split equally between a couple.

The Court of Appeal heard this week that Julie Sharp, who earned millions of pounds a year in salary and bonuses as an energy trader, is fighting a court decision to award her former husband, Robin Sharp, a large proportion of their £6.9m fortune. The couple were married for four years. Lawyers for Ms Sharp argued that as virtually all the wealth stemmed from Ms Sharp, dividing the assets equally was unfair because they had experienced a "short, childless, dual career marriage".

In a 2015 ruling, judge Sir Peter Singer awarded Mr Sharp £2.74m in a "clean break" based on an equal split of their assets, with a reduction to reflect those his wife had built up before the marriage. Sir Peter said that her gender should not affect the amount awarded to her husband. "The fact that this is in effect a husband's claim against a wife rather than the more conventional claim of a wife against husband emphatically does not call for a discount," he said.

Ms Sharp is appealing against the settlement, arguing that her former husband should receive no more than £1.2m. Her lawyer Frank Feehan QC told three appeal court judges that "because this was a short marriage he should not get half of the matrimonial pot". He said the couple had never pooled their money during the marriage.

Lawyers for Mr Sharp argued he made a major contribution by project managing and carrying out renovation works on the couple's two properties, particularly after he took redundancy in 2012.

The judges will rule on the appeal at a future date, yet to be fixed, but lawyers said a ruling in Ms Sharp's favour would overturn a landmark judgment in 2006 which said that assets built up during a marriage should be split in half by default, regardless of the length of the marriage.

Jo Edwards, head of family law at Forsters, said the key question in this case was not about gender but whether the brevity of a marriage was a reason for a departure from 50/50 division of assets. "If Ms Sharp succeeds in overturning this judgment it could have a significant impact on 'short marriage' cases going forward, eroding the longstanding sharing principle," she explained.

Lawyers say that if Ms Sharp succeeds it will create yet another point of contention for divorce lawyers. "For example, how short does a marriage need to be in order to be defined as 'short', and at what point is one entitled to share the money earned by the other party?" said Alex Carruthers, partner at Hughes Fowler Carruthers.

"Ms Sharp is seeking to prove that the current interpretation of the law is wrong and that her settlement should be reflective of the length of their marriage and the extent to which their assets mingled . . . this is a bold tactic, but one that could save Ms Sharp a considerable sum of money."

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This case reiterates the complexity that surrounds many divorce cases. Even where the facts look relatively straightforward, the court still retains discretion to make awards and ultimately a huge amount can depend on the judge who deals with the matter on the day.

Hetty Gleave, partner in the family department of Hunters Solicitors, said the case highlighted the need for a "flowers, dress, pre-nup" conversation before marriage. "This is particularly important for couples with significant pre-existing assets and established careers, where one of the parties is likely to be making a greater financial contribution to the marriage than the other," she added.

Ros Bever, partner in the family team at Irwin Mitchell Private Wealth, agreed. "If the wife in this case was so opposed to the sharing principle applying, why did she not enter into and insist upon a pre- or post-nuptial agreement, to protect against the usual sharing principles applying?"

Ms Bever referred to the case of Radmacher v Granatino, and said these agreements were exceptionally "effective protective measures which can be taken to protect against the vagaries of the court's discretionary exercise".

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