

# FLPA Twilight Seminar/Webinar

## Advocacy and Courtroom Preparation

The 2021 Judge Middleton Series  
Featuring Barrister, Jeff Bunning



22 April 2021

# Scenario 1

- ▶ Spousal Maintenance in a Busy Duty List

# Relevant Facts

- Parties represented.
- Wife - 50 years of age, prior to children was accountant earning \$85,000.00 per annum. Not worked in 8 years.
- Husband - 52 years of age, Family Lawyer
- Three children – 8, 6 and 2 years old. Live with Wife, spent no time with Husband since separation.
- 10-year relationship. Separated 3 months.
- Separation occurred when Husband changed locks on Ascot property
- Wife came home to find locks changed and Husband sent her a text message

advising her of the separation

- Parties have superannuation and hold the following assets:
  - Ascot property - \$3,000,000 (mortgage \$2,400,000). No re-draw. In sole name of Husband (H insistent at time of purchase it be in his sole name). Mortgage held jointly, therefore jointly and severally liable for mortgage repayments of \$2,000 per week (interest free)
  - Cars, chattels and the like (of no significant value).

## Relevant Facts cont.

- Since separation, Husband stopped paying mortgage. Outgoings on property (electricity, water etc) in joint names.
- Wife receiving calls from bank and providers about unpaid bills
- Wife not working, living with parents on Gold Coast. Nowhere else to go.
- Children attend Ascot State School and Wife driving the children up and down from the coast each day for school.
- Wife in receipt of Centrelink. Borrowed money from parents for legal fees and for basic items for children. No assets in her name or income.
- Husband is a family lawyer, earns per week \$5,500.00.
  - Financial Statement reveals:
    - Income - \$5,500 pw
    - Income tax - \$2,500 pw
    - Mortgage repayments - \$2,000 pw
    - Other expenses (electricity etc) - \$500 pw
    - Spending (food, entertainment, phone etc) - \$1,200 pw
  - He therefore has a shortfall income over expenditure on his financial statement of \$700 pw
- Wife's Financial Statement reveals:
  - Paying no rent to her parents.
  - Centrelink income - \$650 pw
  - Expenses (petrol, food, phone etc) - \$1,000 pw (\$500 for her, \$500 for children)
- The Wife's has filed an Affidavit. She seeks to be able to live in the Ascot area and obtain a rental. The evidence reveals a 4-bedroom home (one for her and one for each of the children) will cost her in the vicinity of \$750 pw
- Numerous requests for disclosure of Husband and letters to that effect. Husband not provided any disclosure however has filed a Financial Statement

# First return

- You are to argue firstly for the Wife:
  - Her Application is for Interim Spousal maintenance in the sum of \$1,750 per week. That is the figure that the Wife seeks so she can rehouse herself and the children and for her Part N Expenses
  - The Wife also seeks an Order that the Husband pay the interest only component of the mortgage, the electricity and water and the like pending further Order
  - The Application is couched as an Application for spousal maintenance but there is no specification in the Application under what head of power the Application is being pursued. The Husband has been put on notice that he is wanted for cross examination.
- You are then to argue for the Husband:
  - He is opposed to the making of an Order for spousal maintenance
  - He has put on no material as to why he changed the locks and has not paid the mortgage or other expenses
  - The Husband does not on Application agree to paying the mortgage and the like
  - Whilst opposing the Application for spousal maintenance the Husband does seek an Order that the Wife have sole use and occupation of the Ascot property pending further Order.

## Scenario 2

- ▶ Part Property Settlement and Litigation Funding in a Busy Duty List

# Relevant Facts

- Parties represented.
- Husband aged 35.
- Wife aged 45.
- Parties never married (called Husband and Wife for purposes of scenario).
- No children.
- Relationship of 7 years, separated 6 months ago.
- At the commencement of the relationship the Husband had:
  - His car, worth around \$5,000,
  - A caravan worth \$12,000,
  - No superannuation,
  - Cash at bank of \$2,500.
- Husband is licensed builder - builds decks on homes. Worked in that job for around 10 years.
- Continues to work in that job although at the present time he is out of work, he contends that 3 months ago he hurt his back on a job site.
- No medical evidence in that regard, been requested by Wife. Bank Statements however show that the Husband is in receipt of a Centrelink allowance and that his Centrelink allowance just meets his needs each week.
- Wife contends by her material that Husband is continuing to work, although she has no proof of that. She contends that most of the work of the Husband is cash jobs and he hasn't declared that cash to the ATO.

# Relevant Facts cont.

- At commencement of relationship Wife had:
  - Surfers Paradise unit - \$1,000,000.00 (unencumbered)
  - Two investment properties, being:
    - Ipswich property - \$250,000. Property rented. Mortgage of \$200,000, redraw of \$30,000 available
    - New Farm property - \$750,000. Property rented. Mortgage of \$500,000, repayments interest free. Line of credit with \$50,000 of redraw.
- Wife is a Real Estate Agent on Gold Coast. With commissions, earns around \$120,000 per year.
- At the end of the relationship the parties have the same property interests as they did at the commencement of the relationship.

# First return

## Husband

- Husband seeking matter proceed to Mediation and valuations and Wife pay
- Final basis - contends he should be entitled to 35% of the property pool
  - Throughout relationship parties contributed as they could.
  - Wife paid for bills on investment property but no mortgage and property unencumbered. He bought food.
- Husband also says he made significant improvements to two investment properties – painted, cleaned gardens, helped build decks
- Contends parties made equal homemaker contributions
- Living in Caravan at the moment, wants rental property (will cost him around \$500 pw). Lawyers carrying his fees and won't do so any longer. Owes them \$20,000.
- Seeking three Orders on interim basis being:
  - Mediation and valuations,
  - \$50,000 part property settlement,
  - \$120,000 in litigation funding to get him to a Trial.

# First return cont.

## Wife

- *Stanford* argument – assets separate, disputes Husband's extent of work on investments
- Never joint accounts. Husband bought some food, all he paid for. She paid for everything else on properties including all repairs, mortgages, electricity etc
- Seeks a dismissal of the Application on a final basis and/or each of the parties keep their property (i.e. she keeps the houses she had at the start, he keeps his car, super and caravan),
- Husband wasted his money, gambler at the Casino two nights a week. She didn't care because kept finances separate. Husband denies extent of gambling but deposes to putting through pokies \$100 from time to time
- She is not opposed to Mediation and valuations but parties pay equally
- She opposes the Application for part property settlement and litigation funding.

# Questions

