

**NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO
11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER
INFORMATION, PLEASE SEE
[HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-
COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS)
ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH
SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER
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[HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-
COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT
AT MANUKAU
(HEARD IN AUCKLAND)**

**FAM-2012-092-002162
[2016] NZFC 1873**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	ROBIN DENNETT Applicant
AND	RUSTY DENNETT Respondent

Appearances: B Carter for the Applicant
A Sweetman for the Respondent

Judgment: 11 March 2016

**RESERVED JUDGMENT OF JUDGE B R PIDWELL
(COSTS)**

[1] Mrs Dennett seeks costs after a judgment delivered by me on 7 December 2015 in respect of proceedings she filed under the Property (Relationships) Act 1976 (PRA) and the Family Proceedings Act 1980 (FPA). A two day hearing took place on 20 and 21 October 2015. Both applications were heard together as there was a crossover of the evidence filed.

[2] Mr Dennett submits that costs should lie where they fall, but accepts he should contribute equally to the hearing fee (\$3624) and the disbursement for preparing the common bundles of documents (\$181). I direct that Mr Dennett pay half of each of those sums.

[3] I will deal with each proceeding separately.

Law

[4] Historically, it was considered just in relationship property proceedings for each party to bear their own costs, as the resolution of the proceedings was seen to benefit each of them.¹ I accept Mr Carter's submission that the Courts are now treating such applications more in line with ordinary civil proceedings, where costs follow the event. There remains, however, the usual wide discretion.²

[5] The discretion must be exercised on a principled basis, bearing in mind the general guidance set out in Rule 14.2 of the District Courts Rules 2014, and the factors particular to proceedings of this nature.

[6] Mr Sweetman has helpfully referred me to the decision of Judge E Smith in *Powell v Allison*³ which sets out the factors peculiar to the issue of costs in Family Court proceedings as including:

- a. The objects of the Act;
- b. The outcome of the proceedings;

¹ Nicola Peart (ed). *Family Property*. (online loose leafed, Westlaw) at PR40.01.

² PRA s 40; FPA s171.

³ [2013] NZFC 7976 at [13].

- c. The material issues;
- d. The way the parties conducted the proceedings, and in particular whether they were complicated or protracted because of tactical or procedural positions adopted by any party;
- e. The means of the parties;
- f. The actual costs incurred;
- g. The overall interests of justice.

PRA Decision

[7] One of the objectives of the PRA is to provide for a just division of relationship property, as inexpensively, simply and speedily as possible.⁴ Unfortunately, by the time any case reaches a long cause fixture, it is neither inexpensive, nor has it progressed particularly speedily. That is through no fault of either party in this case, as they negotiated and resolved a number of issues leaving only a few outstanding for determination. The case was well presented by both counsel.

[8] The quantum of a s 15 award was the main issue. Mr Dennett appropriately conceded that some compensation should be paid for economic disparity. The parties each engaged well known experts, who in turn co-operated to provide a joint statement to the Court. The only issues I needed to determine are which approach to take in the circumstances of this case, in light of divergent case law, and to make some factual findings.

[9] In terms of the outcome of the proceedings, I rejected Mr Dennett's claim for occupational rental, and decided against him in respect of an alleged advance to a family trust.

⁴ PRA s 1N(d).

[10] I was also required to determine a number of ancillary valuation issues, some of which I found in favour of Mrs Dennett (superannuation, Westpac shares) and others in favour of Mr Dennett (car, boat).

[11] Mr Carter highlights that a settlement offer was made on 25 May 2015, on a Calderbank basis, with the overall settlement amount of \$1,063,038.65, including the components of the spousal maintenance of \$60,000, a \$40,000 contribution to legal costs, and Mrs Dennett's expert's calculation of the quantum of her s 15 claim. However, without knowing how much the family home will be or has been sold for, it is difficult for me to compare this offer with the outcome of my decision.

[12] Another settlement proposal was made on 19 October 2015, on a Calderbank basis, the day before the hearing. It conceded a number of minor issues, and reduces the contribution sought for legal fees, acknowledging at this juncture that the family home had to be sold. The respondent notes that Mrs Dennett only conceded this substantial issue at the Court room door.

[13] Parties should be encouraged to settle proceedings and I do not consider the detail of these proposals assist me in considering the costs issue, particularly when the value of the main asset (the family home) was changing during this time.

[14] Mr Sweetman for the respondent submits that Mr Dennett was willing to attend private mediation or a judicial settlement conference but Mrs Dennett would not agree.

[15] I note that each party is employed and has incurred significant legal costs (including the costs of experts) to resolve their relationship property issues. Although I did not accept Mr Dennett's expert's calculation of the s 15 award, my decision was based on factual findings and guidance from the emerging case law. As is often the case in the Family Court, there was no clear winner or loser. I made findings on a number of issues both for and against each party.

[16] In those circumstances, I do not consider it to be in the interests of justice for costs to be awarded against Mr Dennett in respect of the relationship property proceedings.

FPA Decision

[17] The object of this Act is to provide for financial maintenance as temporary support after a relationship breaks down, to enable the disadvantaged spouse to adjust to the new economic circumstances.

[18] Mrs Dennett sought \$60,000 in a lump sum for spousal maintenance up to the hearing date. I awarded her \$33,653.

[19] Mr Dennett opposed any award being made on the basis that Mrs Dennett had the benefit of occupation of the home, and spousal and child support up to December 2013. The voluntary payments stopped then, not because Mrs Dennett was no longer in need, but because Mr Dennett's financial position changed. He was then supporting a new partner and her children. However, Mrs Dennett still had an ongoing need and suffered hardship by the lack of ongoing financial support, up to the date of hearing.

[20] I do not accept that Mr Dennett in fact supported his new partner and her children to the extent claimed, nor that he was obliged to over and above his obligations to his first family.

[21] A significant portion of the Court hearing time was focussed on the spousal maintenance claim, which was successful, albeit not to the full amount claimed. I consider costs should follow in those circumstances and award costs on a 2 B basis for one day of hearing, together with the associated preparation tasks.

[22] In addition, an application for discovery of Mr Dennett and his partner's financial records was filed and aggressively opposed. A hearing was required. Judge Malosi granted the application and reserved costs until the substantive hearing. The bank statements were disclosed and proved highly relevant as they

revealed additional income being received by Mr Dennett's new partner in the form of WINZ benefits and money from her former husband, and money he himself received from the sale of relationship property shares.

[23] A considerable amount of time was spent at the substantive hearing on these issues. The hard fought opposition to the discovery application appears to have been an attempt to ensure neither Mrs Dennett nor the Court (or other authorities) was aware of Mr Dennett's true financial situation at that time. Inadequate disclosure of a party's financial position can be considered to be obstructive behaviour to justify an award of costs.⁵

[24] The actual costs incurred by Mrs Dennett in respect of the discovery application were \$3622.50. I award her that amount in full.

Signed at this day of 2016, at am/pm.

B R Pidwell
Family Court Judge

⁵ *Webby v Webby* FC Otahuhu FAM038/869/1997, 8 September 2000, per Judge Mahoney.