

WHITE

V

WHITE

(2000)

A FARMING DIVORCE

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The Facts

- i. Mr Martin White and Mrs Pamela White were married in 1961 and so by the time they legally separated in 1994 they had been together for approximately 33 years running a successful dairy farm in Taunton, Somerset.
- ii. They had three children, the oldest of whom was killed, leaving Philip who is now 36 and Hilary who is 35. All children were independent at the time of divorce.
- iii. Both Mr and Mrs White were from farming families and were farming independently before their marriage.
- iv. At the outset, each of them contributed a more or less equal amount of capital of approximately £2,000. In 1962 they bought a farm of their own, Blagroves Farm, which comprised of 160 acres (including a Jacobean farmhouse).
- v. The price was £32,000 of which £21,000 was borrowed in the form of a mortgage. Mr White's father also gave them an interest free loan of £11,000 to go with a further £3,000 used as working capital.
- vi. Over time they increased the size of the farm to 337 acres. All the land was owned jointly and the whole was treated as property of the farming partnership. When the matter came to trial, the farm was worth £3.5 million.
- vii. The Whites also farmed Rexton Farm as part of their partnership business. This farm comprised 300 acres and was originally part of the Willett Estate. This estate was brought by Mr White's father in 1971. He later transferred the estate into the joint names of himself and his three sons. Mr White's share of the cost of borrowing was met through a tenancy agreement by his farming partnership with Mrs White. The two were run as a single unit although kept in Mr White's sole name. In 1993 Mr White acquired Rexton Farm when the Willett Estate was partitioned amongst the family. Rexton Farm was held in his sole name and was valued at £1.25 million at the time of the hearing.
- viii. Mr and Mrs White had also made pension provisions for themselves and a substantial mortgage was still outstanding on both farms. After a deduction of estimated liabilities for capital gains tax and costs of sale, the overall net worth of Mr and Mrs White's assets was approximately £4.6 million.

The Facts – Cont’d...

This is roughly divided into:

Mrs White:

- Sole property - £193,300 (£190,000 of which is pension provision)
- Her share of property owned jointly or through the partnership - £1,334,000.

Mr White:

- His share of property owned jointly or through the partnership - £1,334,000.
- Sole property - £1,783,500 (mostly Rexton Farm).

The Case – First Hearing

- i. As an equal partner in the business who had worked on the farm as well as bringing up the children, Mrs White argued that she should have a half share of the overall assets. She wanted to farm in her own right, and accepted that her husband, Mr White, should be allowed to do the same.
- ii. Both of them wanted a clean break so that neither would have any claims against the other in the future.
- iii. The case was first heard by Mr Justice Holman who gave an orthodox decision based on the standard approach of the Family Division.
- iv. He ordered that Mrs White should receive £425,000 with which to buy a home for herself. This includes space for her horses and stabling. She should have maintenance calculated for the rest of her life at £40,000 net which was capitalised on a "Duxbury" calculation (so that she would use the capital and interest during her lifetime) of £550,000. As she had savings in her own name of £190,000, her claim was rounded down to £800,000 - the sum which Mr White was to have paid her. In return, she would transfer all the jointly owned assets into his name.
- v. His reasoning for this was that neither party had any earning capacity outside farming. Also, that Mrs White's wish to have enough money to purchase her own farm was not a reasonable one. This is because it is unwise and unjustifiable to break up the existing, established farm so that she could embark on another.
- vi. The court felt that Mr White, who had been farming without a break for over 30 years, should be able to continue to do so. It was felt that he could raise the lump sum of £800,000 whilst still leaving the core of his farming enterprise at both Blagroves and Rexton intact and viable. Mr Justice Holman was the last judge to be concerned with the question of viability. It also appears to have been the last time that the court considered the position of their son, Philip White, and what sort of business he would be left with.

The Court of Appeals

- i. Pamela White was disappointed with this award, understandably, and appealed against the decision of Mr Justice Holman. She felt that one fifth of the overall asset was unfair.
- ii. The Court of Appeal increased her award from £800,000 to £1.5million approximately 35% of the total assets (4.6 million).
- iii. Great emphasis was laid upon the fact that this was a genuine partnership. There was no fairness in an outcome that involved a transfer property order in favour of Mr White. Also, Mrs White's contribution as a wife and mother had to be taken into account as well as her role within the partnership. Mr White would still be able to farm even if on a reduced scale.
- iv. The Court of Appeal considered, and took into account, what the starting point was so far as the ownership of the assets concerned, and how much Mrs White would have received had the partnership been dissolved. On the other hand, although without the early contributions of Mr White's father the couple would not have been able to acquire their own farm when they did, they also looked at Mrs White's direct or indirect contribution to its retention. This did not cover Rexton Farm however as it was considered to be a sole asset of Mr White.
- v. Both Mr and Mrs White objected to the Court of Appeal's decision and each appealed to the House of Lords. Mr White wanted to return to the original figure of £800,000, whilst Mrs White wanted to press on for half of the overall assets.

The Appeal to the House of Lords

- i. The House of Lords dismissed both their appeals, leaving Mrs White with the £1.5m awarded in the Court of Appeal.
- ii. In doing so, Lord Nicholls of Birkenhead in the leading judgment laid down principles of a very different nature from those used previously in family courts. These principles changed the approach that will have to be adopted when negotiating financial settlements on divorce or presenting them to the court in the future.
- iii. The first major change is the rejection of the wife's "reasonable requirements" as the main consideration when working out a settlement. Whilst this had at least provided a consistent framework for settlements in the past, it was felt to be discriminatory. In so called "big money cases", where the families' assets can more than adequately meet both parties' housing and income needs, such an approach tended to leave the wife with substantially less than the husband even if the business was a partnership. This is what occurred in the first ruling on the case.
- iv. The principal feature of the White case was the equality of contribution made by each of them over their married life. Both of them had worked extremely hard in their capacity as farmers, as well as Mrs White's contribution within the home. Lord Nicholls asserted that there should be no bias in favour of the money-earner against the home-maker and the child-carer. He also recognised that by being at home and having to look after young children, a wife may lose the opportunity to acquire and develop her own money-earning qualifications and skills.
- v. In this case the House of Lords did not rate the viability of the business as a valid reason for not equally dividing the assets. This is largely because of the lack of dependants.
- vi. At the end of his judgment, when dealing with a minor point as to whether net or gross values should be used in such cases, Lord Nicholls said this: "Under her award, Mrs White will have money. She can invest or use it as she pleases. Mr White's equivalent, as a cash sum, is the net value of the farms. The farms have to be sold before he can have money to invest or use in other ways. What will be his financial position if he is able to retain the farms or parts of them? Dairy farming is currently languishing in the doldrums. On the evidence there is no reason to suppose that the farms are likely to yield a better financial return at present than an investment return to be expected if Mr White sold up and invested the net proceeds".

The Appeal to the House of Lords – Cont’d...

- vii. The House of Lords considered the question of property that is acquired during the marriage by one spouse as a gift or as an inheritance, perhaps as a beneficiary under a trust. It felt that, when present, this factor is one that needs to be taken into account. It represents a contribution made to the welfare of the family by one of the parties to the marriage. In this case however it was thought that it did not hold much weight due to the length of time since the contribution made by Mr White’s father.

The Aftermath

- i. While many people would welcome the end to a somewhat discriminatory approach to “big money” divorce cases, the position now leaves farming families in a state of great uncertainty.
- ii. The contribution which each spouse makes is undoubtedly going to form an important part of such cases when they are presented to the court. But the yardstick of equality will balance out those contributions in many cases. Even if a farming husband argues that he inherited the farm and has been farming it exclusively for 20 or 30 years, his wife will be able to say that her contribution in bringing up the children is equal to that; her share of the assets should not, therefore, be greatly different to his.
- iii. Arguments concerning the viability will only really carry weight if the couple is younger and have young children as it is seen as the income that maintains the family. Some protection may be formed though in the shape of discretionary trusts, partnership deeds between family members that exclude spouses and also the use of pre-nuptial agreements.